

**MINUTES**

**ZONING BOARD OF ADJUSTMENT**

**BRUNSWICK COUNTY, N.C.**

**6:00 P.M., Thursday  
August 22, 2019**

**Commissioners Chambers  
David R. Sandifer Administration Building  
Brunswick County Government Center  
Old Ocean Highway East, Bolivia**

MEMBERS PRESENT

Robert Williamson, Chairman  
Mary Ann McCarthy  
Marian Shiflet  
Virginia Ward  
Alan Lewis

MEMBERS ABSENT

None

STAFF PRESENT

Helen Bunch, Zoning Administrator  
Bryan Batton, Assistant County Attorney  
Justin Brantley, Project Planner

OTHERS PRESENT

Scott Dutton, ATMC

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:02 p.m.

II. ROLL CALL.

There were no members absent.

III. CONSIDERATION OF MINUTES OF THE JULY 11, 2019 MEETING.

Ms. Shiflet made a motion to accept the minutes of the July 11, 2019 meeting as written. The motion was seconded by Ms. McCarthy and unanimously carried.

IV. AGENDA AMENDMENTS.

Ms. Bunch requested to move the Election of Officers to the end of the meeting.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. McCarthy explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

Ms. McCarthy said that the public hearing is not to solicit broad public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the record by the applicants, proponents, opponents and staff. All parties involved must be affirmed or sworn in as required by the North Carolina General Statutes. The opposing parties have the right to cross examine witnesses and file documents into the record.

Ms. McCarthy stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.5.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

Ms. McCarthy informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

VI. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and or/ affirmed Helen Bunch and Scott Dutton as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

A) 19-13V: Variance  
Applicant: Atlantic Telephone Membership Corporation (ATMC)  
Location: 101 Town Creek Road NE, Leland, NC 28451  
Tax Parcel 0700004602  
Applicant requests three (3) Variances from Section 5.3.4.M. and Section 4.4.4.A. of the Brunswick County Unified Development Ordinance (UDO) for the construction of a minor utility equipment facility. The first

variance request is to allow the facility to be located 34.7' from the front property line as opposed to the 40' required by the Ordinance. The second variance request is to allow the facility to be located 16' from the right-side property line as opposed to the required 30' from the right-side property line. The third variance request is to allow the facility to be located 29.4' from the street side property line as opposed to the 50' required by the Ordinance.

Ms. Bunch addressed the Board. Ms. Bunch read the Staff Report (attached). Ms. Bunch identified the subject property and surrounding properties on a visual map.

Mr. Scott Dutton, representative of Atlantic Telephone Membership Corporation (ATMC), addressed the Board. Mr. Dutton stated that the site has been used since the 1980's and over the years has become a critical convergence point for communication infrastructure. Mr. Dutton stated that the main reason for the request is above ground damage and loss to the facility from Hurricane Florence. Mr. Dutton added that it would be easier to replace the equipment and structure onsite than to rebuild at another location because it is an established convergence point.

Mr. Dutton stated that the intent is to permanently replace the former network and communications facility in a manner to also help prevent future outages and loss of critical services. Mr. Dutton added that an improvement to the site will include an elevated platform for the equipment cabinet and backup power. Mr. Dutton continued that as a result of Hurricane Florence, there is currently a lack of reliable facilities within that area of the County, which can affect recovery efforts associated with future incidents.

Mr. Dutton stated that the strict application of the ordinance in regard to structure setbacks would prevent the reestablishment of the telecommunication equipment site resulting in a hardship for ATMC. Mr. Dutton added that the hardship also results from conditions peculiar to the property, specifically the size of the parcel (0.123 acres). Mr. Dutton stated that most of the properties that ATMC has used over the years are very small. Mr. Dutton stated that the hardship does not result from actions taken by ATMC.

Mr. Williamson asked about the height of the current fence on site. Mr. Dutton responded that he thinks the fencing is seven feet (7') in height. Mr. Williamson asked about the height of the changes to the site. Mr. Dutton responded that a twelve-foot (12') platform will be added to the site and the equipment would be an additional six feet (6'). Mr. Williamson asked about the height of the equipment currently on the site. Mr. Dutton responded currently the structure on site is around six feet (6') in height. Mr. Dutton

added that the original building on the site was around fourteen feet (14') in height.

Mr. Williamson asked what took so long to get this site restored. Mr. Dutton responded that it took significant time to evaluate the issue and seek options.

Mr. Williamson asked if these improvements are not made to the site, could it negatively impact 911 Communications. Mr. Dutton responded, yes, it could negatively impact 911 Communications under the right circumstances.

Ms. Shiflet asked if the existing building would be removed, with a new building put in its place. Mr. Dutton responded that the platform and equipment will replace the existing structure and will take less space on the site compared to the previous building.

Ms. Ward asked if the fencing will appear residential in its aesthetics. Mr. Dutton responded that ATMC could make that change if necessary.

Mr. Williamson asked what the site is referred to as. Mr. Dutton responded that it is a telecommunications equipment site. [Note that per the Brunswick County Unified Development Ordinance (UDO) the use is categorized as a "Minor Utility Equipment Facility."]

With no further comments, the Chairman summarized that Atlantic Telephone Membership Corporation is requesting three variances for a telecommunications equipment site. The variances are being requested as a result of damage to the site during Hurricane Florence that requires the replacement of some equipment. Mr. Williamson stated that it would be impractical to move all of the equipment to another site because the site serves multiple communication lines. Mr. Williamson stated that two (2) of the variances are for the 2 road frontages and the third variance is for a side setback. Mr. Williamson added that improvements to the site would ensure the safety of the 911 Communications System for the future.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

**DECISION:** Having held a public hearing to consider Case Number 19-13V, submitted by Atlantic Telephone Membership Corporation (ATMC), a request for three (3) variances to use the property located at 101 Town Creek Road NE, Leland NC 28451 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACTS** and draws the following Conclusions:

1. It is the Board's **CONCLUSION** that, unnecessary hardship will 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. This conclusion is based on the following **FINDINGS of FACT**: The site is the location of critical communications equipment necessary for the Brunswick County 911 Center and the Leland area of Brunswick County. The underground equipment cannot be easily relocated, and Brunswick County is currently in the hurricane season, making the need to have communications equipment capabilities even more vital.
2. It is the Board's **CONCLUSION** that the hardship does result 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 grant a variance. This conclusion is based on the following **FINDINGS OF FACT**: The size of the property (0.123 acres) causes the hardship, as a platform is needed to keep the equipment above potential floodwaters, coupled with the fact that the underground equipment is still in intact and usable.
3. It is the Board's **CONCLUSION** that the hardship does 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. This conclusion is based on the following **FINDINGS OF FACT**: The hardship is a result of the actions of Hurricane Florence. The equipment was installed prior to the enactment of zoning in Brunswick County. The location of the equipment met the standards in effect for the project at that time.
4. It is the Board's **CONCLUSION** that 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. This conclusion is based on the following **FINDINGS OF FACT**: The Staff Report indicated that the hardship was a result of an Act of God (Hurricane). Due to the size of the property, here is no area on the parcel where both the necessary platform and equipment will meet the structural setback requirements.

THEREFORE, on the basis of all foregoing, IT IS ORDERED that the application for the VARIANCE be GRANTED, as motioned by Ms. Ward, seconded by Mr. Lewis and unanimously carried.

VIII. STAFF REPORT.

Ms. Bunch stated that next month's meeting will likely include a minimum of three cases. Ms. Bunch also provided an update regarding the previous recommendation by the Board of Adjustment for the Planning Board to consider amending the UDO for the setback of accessory structures to be consistent with residential setbacks for primary structures. Ms. Bunch stated that this change has been adopted by the Board of County Commissioners.

Mr. Williamson asked Ms. Bunch if the Board could consider changing the meeting time from 6:00 P.M. to 5:30 P.M. Mr. Batton stated that it may be a problem for participants who get off of work at 5:00 P.M. Mr. Batton added that it is up to the Board to decide. Mr. Williamson stated that the Board will think about it and possibly consider the change in the future.

IX. ELECTION OF OFFICERS.

Ms. McCarthy nominated Mr. Williamson for the position of Chairman. The motion was seconded by Ms. Ward. Mr. Lewis motioned to close nominations. The motion was seconded by Ms. Shiflet. The Board unanimously approved Mr. Williamson as Chairman.

Ms. Ward nominated Ms. McCarthy for the position of Vice-Chairman. The nomination was seconded by Mr. Williamson. The Board unanimously approved Ms. McCarthy as Vice-Chairman.

X. ADJOURNMENT.

With no further business, Ms. Shiflet made a motion to adjourn. The motion was seconded by Mr. Williamson and unanimously carried.