

CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
January 10, 2013

REGULAR MEETING

The Currituck County Board of Adjustment met on January 10, 2013 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: David Palmer, Christian Conner, Cameron Tabor, Michael Painter, Theresa Dozier and Vivian Simpson. Brad Schuler, Planner; Stacey Smith, Code Enforcement Officer; and Ben Gallop, Board of Adjustment Attorney; were also present.

Mr. Conner called the meeting to order and announced a quorum have been met with five regular members and one alternate member.

Mr. Conner presented Bryan Bass with a plaque of appreciation for his dedication to the Board of Adjustment.

ELECTION OF OFFICERS

Mr. Connor nominated Cameron Tabor for Chairman. Theresa Dozier 2nd that motion and the motion passed unanimously.

Mrs. Dozier nominated Christian Conner for Vice Chairman. Cameron Tabor 2nd that motion and the motion passed unanimously.

APPROVAL OF NOVEMBER 8, 2012 MINUTES

Mr. Connor motioned to approve the November 8, 2012 minutes with no changes. Mr. Palmer 2nd the motion and the motion passed unanimously.

Item 4: BOA 13-1 NTELOS: Conditional use permit to allow a telecommunications tower more than 50 feet located at 702 Northwest Backwoods Road, Tax Map 3, Parcel 1A, Moyock Township.

Glenn Hampton and Mr. Brad Schuler appeared before the board and were sworn in.

Mr. Schuler presented the following case to the Board:

Case Number:	BOA 13-01
Applicant:	Richmond 20MHz, LLC. (dba Ntelos)
Property Owner:	Vernon P. Garrett, III
PIN:	0003-000-001A-0000
Address:	702 Northwest Backwoods Road (proposed)

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Zoning District: Agricultural (A)
Township: Moyock

Request

Conditional use permit to allow a 199 foot telecommunications tower in the Agricultural (A) zoning district, pursuant to the Table of Permissible Uses of the Currituck County Unified Development Ordinance.

**Application reviewed under the Unified Development Ordinance adopted and effective on September 4, 2007 (1989 UDO), and amended through the date of application, November 21, 2012.*

Narrative

1. The 199 foot monopole tower will be within a 75' x 75' lease area approximately 940 feet from the front property line.
2. The tower and supporting ground equipment will be surrounded by an eight foot security fence within the leased area.
3. The tower will be accessed by a 12' gravel road.
4. The tower itself will provide four antenna array and co-location opportunities.

Conditional Use Permit Criteria and Staff Findings

The Board must find that the applicant meets all criteria in order for a conditional use permit to be approved. Following is the staff suggested findings for each criterion (as is required by the UDO).

In granting a conditional use permit, the Board of Adjustment may attach to the permit such reasonable requirements in addition to those specified in this ordinance as this will ensure that the development in its proposed location meets the following:

- (a) The application is complete.**
 1. The application is complete.
- (b) The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."**
 1. The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."
- (c) The conditions proposed meet or exceed the minimum requirements of this ordinance.**
 1. The conditions proposed meet or exceed the minimum requirements of this ordinance.
- (d) The conditional use will not endanger the public health or safety.**
 1. The proposed use should have no impact on public health or safety.
- (e) The conditional use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.**

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1. The proposed location of the tower is surrounded by wooded area and farmland. The use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.
2. The surrounding land uses include:
 - a. North: Undeveloped Zoning District: A
 - b. South: Undeveloped Zoning District: A
 - c. East: Undeveloped Zoning District: A
 - d. West: Undeveloped Zoning District: A

(f) The conditional use will be in conformity with the Land Use Plan and other officially adopted plans.

1. The conditional use is in conformity with the Land Use Plan and other officially adopted plans.
2. The 2006 Land Use Plan classifies this property as Rural within the Moyock subarea. The Rural classification emphasizes low-density development and preservation of agricultural areas.

(g) The conditional use will not exceed the county's ability to provide adequate public facilities.

1. The proposed use will not exceed the county's ability to provide adequate public facilities.

TRC/Staff Recommendation:

The Technical Review Committee and staff recommend **approval** of this request subject to the findings of fact as presented above and the following conditions:

1. A 10 foot buffer of the existing vegetation shall be preserved around the perimeter of the facility or adequate landscaping be installed to screen the facility from surrounding properties; provided however, that vegetation that causes interference with the antennas or inhibits access to the facility may be trimmed or removed.
2. Prior to issuance of building permit, the applicable NCDENR stormwater permit shall be submitted to the Planning and Community Development Department.

DISCUSSION

Cameron Tabor asked any activity been done on this property.

Mr. Schuler stated that there had been no activity yet.

David Palmer wanted to clarify that this application is under the old UDO and questioned when they would use the new UDO for the record.

Mr. Schuler advised that it would depend on when the application submittal date.

Mr. Gallop stated that the new UDO is effective January 1.

Glenn Hampton representing NTELOS explained to the board that they are attempting to come into this area for the customers to give more coverage. There are 9 sites in the future along Hwy 17 and 8 of those sites to be handled by co locate. This location is important as it covers the gap between the areas in Currituck to the other side of Hwy 17. It will be 199 feet and will provide NTELOS and possibly three other major carriers to co locate to provide a wider coverage for their customer base. It is an attempt to bring in better coverage to the customers.

Cameron Tabor asked if any personnel would be on site.

Glenn Hampton stated that no personnel would be on site only monthly checks by the engineers.

Cameron Tabor asked if the tower would be lit.

Glenn Hampton stated that the tower would not be lit and the FAA does not require it to be lit due to the height.

David Palmer asked if there were any concerns in the area from citizens.

Glenn Hampton stated he emailed the president of the Crown Point HOA and hasn't heard from anyone.

Theresa Dozier asked if notification is still the same.

Mr. Schuler advised that every landowner within 200 feet received a letter in the mail and the county advertised the agenda in the newspaper.

ACTION

David Palmer motioned to approve the conditional use permit as presented. Theresa Dozier 2nd that motion. Motion carried unanimously.

Item 5: BOA 13-2 WORLD MOTORS LLC: Conditional use permit to allow automobile sales & rental located at 1383 Caratoke Hwy, Tax Map 23, Parcel 10, Moyock Township.

Joseph Hellstern and Richard Green appeared before the board and were sworn in.

Mr. Schuler presented the following case to the board:

Case Number: BOA 13-02
Applicant: World Motors, LLC
Property Owner: Judsky, Inc.
PIN: 0023-000-0010-0000
Address: 1383 Caratoke Highway
Zoning District: General Business (GB)
Township: Moyock

Request

Conditional use permit to allow a auto sales and rental in the General Business (GB) zoning district, pursuant to the Table of Permissible Uses of the Currituck County Unified Development Ordinance.

**Application reviewed under the Unified Development Ordinance adopted and effective on September 4, 2007 (1989 UDO), and amended through the date of application, November 20, 2012.*

Narrative

5. The operation will use an existing building on the property. Additional asphalt will be added to the vehicular area in compliance with the standards of the UDO.
6. The proposed hours of operation are 9am to 7pm, Monday to Saturday. Sundays would be by appointment only.

Conditional Use Permit Criteria and Staff Findings

The Board must find that the applicant meets all criteria in order for a conditional use permit to be approved. Following is the staff suggested findings for each criterion (as is required by the UDO).

In granting a conditional use permit, the Board of Adjustment may attach to the permit such reasonable requirements in addition to those specified in this ordinance as this will ensure that the development in its proposed location meets the following:

- (a) **The application is complete.**
 2. The application is complete.
- (b) **The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."**
 2. The proposed use is among those listed in the Table of Permissible Uses as a conditional use indicated with a "C."
- (c) **The conditions proposed meet or exceed the minimum requirements of this ordinance.**
 1. The conditions proposed meet or exceed the minimum requirements of this ordinance.
- (d) **The conditional use will not endanger the public health or safety.**
 1. The proposed use should have no impact on public health or safety.

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(f) The conditional use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.

3. The proposed location is within a commercial and industrial zoned area. The use will not injure the value of adjoining or abutting property and will be in harmony with the area in which it is located.

4. The surrounding land uses include:

a.	North:	Office Building	Zoning District: GB
b.	South:	Undeveloped	Zoning District: HM
c.	East:	Undeveloped	Zoning District: HM
d.	West:	Undeveloped Rail Road R/W	Zoning District: GB/HM

(f) The conditional use will be in conformity with the Land Use Plan and other officially adopted plans.

2. The conditional use is in conformity with the Land Use Plan and other officially adopted plans.

2. The 2006 Land Use Plan classifies this property as Rural within the Moyock subarea. The Rural classification emphasizes low-density development and preservation of agricultural areas. Land Use Plan policies that are relevant to this use:

POLICY TR6: HIGHWAY 158/168 shall receive special attention concerning the proper development of land and properties adjoining and/or accessing this critical area.

POLICY CD7: Attractive, environmentally beneficial LANDSCAPING shall be provided by new commercial or office developments, and in the rehabilitation and upgrading of existing developments. Appropriate BUFFERING or other effective DESIGN FEATURES may be employed to allow less intensive forms of commercial and office development to adjoin existing or planned residential uses.

POLICY CA1: The important economic, tourism, and community image benefits of attractive, functional MAJOR HIGHWAY CORRIDORS through Currituck County shall be recognized. Such highway corridors, beginning with US 158 and NC 168, shall receive priority attention for improved appearance and development standards, including driveway access, landscaping, buffering, signage, lighting and tree preservation.

POLICY ML4: Currituck County recognizes that the appearance and traffic moving function of the NC 168/ US 158 CORRIDOR is of exceptional importance to both the near term quality of life and long-term economic prospects for residents and property owners in the Mainland Area. The Transportation and Community Appearance policy sections of this plan shall be implemented to give priority to this issue.

(g) **The conditional use will not exceed the county's ability to provide adequate public facilities.**

1. The proposed use will not exceed the county's ability to provide adequate public facilities.

TRC/Staff Recommendation:

The Technical Review Committee and staff recommend **approval** of this request subject to the findings of fact as presented above.

DISCUSSION

Cameron Tabor asked if there were any conditions.

Mr. Schuler stated there were no conditions

Joseph Hellstern explained that they wanted to open a car lot as was in the past on that property. The dealership will be bringing in local people to detail cars and work at the facility.

Christian Connor asked how many cars would be on the property.

Joseph Hellstern stated about 30 to 40 cars.

David Palmer questioned where the cars would be located.

Joseph Hellstern stated that the vehicles would be located in the display area as shown on the site plan.

Christian Conner questioned if there was a sign already on the property.

Mr. Schuler confirmed that the property already had a freestanding sign.

Cameron Tabor asked if there were comments from any citizens.

Mr. Schuler stated that Mr. Innes had called asking the time of the meeting was the only one.

James Innes appeared in front of the board and was sworn in.

Mr. Innes explained that he owned the property next door. I do not have a problem with a car lot next-door, as there has been one there before however, I just do not want our property blocked by cars and are unable to pull out safely. The daycare located on our property has two school buses and 60 -100 parents that pick up and deliver kids daily and it is hard to see cars coming from the south and when cars are parked out front on

the car lot it is hazards getting in and out of the property. I request a set back from the front for the visibility coming and going from our property.

Cameron Tabor stated that he was familiar with the property and it does sit higher than Mr. Innes' property.

Christian Conner asked how far off the road to the display area.

Mr. Schuler stated that the display area has a set back of 20 foot from the front property line.

Joseph Hellstern stated that from the road to the line is 20 feet and we are back another 10 feet from that.

Cameron Tabor stated he was concerned about that curve in the road and not being able see an on coming car.

Vivian Simpson asked if the board could give them a guideline.

Mr. Schuler stated that the board could add a condition to the permit.

Vivian Simpson agrees with Mr. Innes as safety is very important. That could be a very dangerous situation.

Mr. Schuler stated that the county requires 20 feet and at any time, if they are in violation we could send them a notice of violation.

Christain Conner asked the applicant if they would make any adjustments to meet his concerns.

Joseph Hellstern stated that they we will be happy to adjust but if you move too far back then wont be able to see the cars however I don't mind meeting with the neighbors and establish a safe distance.

James Innes will be happy to meet with them on the property.

Vivian Simpson asked who decides what is safe.

Cameron Tabor asked if the county would have the authority to enforce their decision.

Mr. Gallop stated it would be a gentlemen's agreement between them.

David Palmer stated that we have to make a legal decision with the evidence that has been brought before us, everything they have submitted complies with our UDO, and I understand there are concerns however they comply with the UDO. He questioned if Mr. Innes's driveway was placed in the wrong location as this building was there first

and with that being said I cannot see a reason to turn them down as they have done what is required of them.

Mr. Gallop advised the board that if they meet all the requirements they must grant the permit however, the board may place reasonable conditions on the permit.

ACTION

David Palmer motioned to approve with the findings of fact as presented. Theresa Dozier 2nd the motion.

Vivian Simpson stated she would like to see a condition to make sure it is safe.

Cameron Tabor asked how would we determine what is safe.

Mr. Schuler stated it would be the applicant's burden to bring back the evidence if you were to continue the case.

Cameron Tabor called for the vote. Motion carried 4-1 with Vivian Simpson nah.

Item 6: BOA 13-3 RICHARD COULTIER: Variance request for a reduction to the minimum lot size, the minimum lot width, and the right-of-way requirements. The property is lot 8 in the Lewark-Bender Subdivision, Tax Map 101B, Parcel 8, Fruitville Outer Banks Township.

Lars Simonsen, attorney for the applicant appeared before the board and was sworn in.

Mr. Schuler presented the following case to the board:

To: Board of Adjustment
From: Planning Staff
Date: January 2, 2012
Subject: PB 13-03 Coulter - Variance

Richard Coulter is requesting a variance from Sections 3.4.4.F and 10.3.3.B.6 of the new Unified Development Ordinance (UDO) for parcel 101B-000-0008-0000 in order to establish it as a buildable lot.

Background

Local governments regulate land use through zoning and subdivision ordinances. Zoning ordinances establish zoning districts with standards such as permitted uses, minimum lot size, and

setbacks, etc. Subdivision ordinances establish standards all subdivisions (the division of a parcel into two or more lots) must meet including open space and street requirements. Since 1989, Currituck County has combined its zoning and subdivision ordinances into one document: the Unified Development Ordinance.

All new subdivisions proposed in the county must be reviewed by staff for compliance with the standards of the UDO prior to being approved. Lots that have been reviewed and approved through the subdivision process established in the UDO are called a "lot of record". The UDO defines "lot of record" as the following:

"EXISTING LOT (LOT OF RECORD)"

A lot which is a part of an approved subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Currituck County, or a lot described by metes and bounds, the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable subdivision and zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Register of Deeds and the lot was created prior to August 2, 1965; a lot upon which an existing structure is located provided a valid building permit was obtained for the construction; or, a lot which at the time of creation met all subdivision and zoning requirements provided a plat is approved by the administrator and recorded with the Register of Deeds containing a certification as to having met the then existing regulations in effect."

Sometimes, lots are created that are not reviewed for compliance with, nor meet the requirements of the UDO. These lots are typically created by a court order or by deed. Lots created that do not meet the standards of the ordinances at the time of its creation are not considered to be a "lot of record". In order to ensure proper implementation of the UDO, Currituck County, pursuant to the North Carolina General Statutes, does not issue any building permits to lots not considered to be a "lot of record".

Coulter Request

Mr. Coulter owns a lot in the off-road area of the Outer Banks; zoned Single-Family Residential-Outer Banks Remote (SFR). The lot was created in 1977 when a larger piece of property was divided by a court order, in accordance with a will, to 11 heirs. At that time, Currituck County had both a zoning and subdivision ordinance. The lot in question did not meet all of the applicable requirements of the subdivision ordinance. Therefore the lot is not considered to be a "lot of record" and a building permit can not be issued for any development proposed on it.

Mr. Coulter is seeking a variance from the standards of the UDO that are preventing the lot from being approved through the subdivision process and thus being considered a "lot of record". Those standards involve lot size, lot width, and lot access. Specifically:

Chapter 3: Zoning Districts - Section 3.4.4.F Dimensional Standards

Requires lots in the SFR district to have a minimum lot area of 120,000 square feet and a minimum width of 125 feet. According to a survey prepared by Coastal Engineering & Surveying, Inc. in 2006, the lot has an area of 20,003 square feet and a width of 118.32 feet.

F. DIMENSIONAL STANDARDS			
Max. Gross Density (du/ac)	N/A	Min. Side Setback (ft)	10 4
Max. FAR (%)	N/A	Min. Rear Setback (ft) [4]	25 5
Min. Lot Area (sq ft) [1]	120,000	Min. Agricultural Setback (ft) [6]	N/A
Max. Lot Area (sq ft)	N/A	Min. Accessory Use Setback (ft) [5]	10 6
Min. Lot Width, Interior Lot (ft)	125 1	Min. Driveway/Parking Setback (ft)	N/A
Min Lot Width, Corner Lot (ft)	125	Min. Fill Setback from all Lot Lines (ft)	N/A
Max. Lot Depth (ft)	[2]	Min. Wetland/Riparian Buffer (ft) [6]	50 7
Max. Lot Coverage (%)	30 [3]	Max. Building Height (ft)	35 8
Min. Front Setback (ft)	20 2	Min. Spacing Between Buildings (ft)	10 9
Min. Corner Side Setback (ft)	20 3	Min. Public Vehicular Accessway Width (ft)	20 10
Min. Major Arterial Street Setback (ft)	N/A		

[1] Applies to family subdivision lots

[2] Lot depth shall not exceed seven times the lot width on beachfront lots

[3] 35% for platted lots of 19,000 sf in area or less

[4] Beachfront lots are also subject to CAMA Small Structure Setback Line requirements

[5] Structures prohibited in front of principal building when principal building is less than 300 feet from accessway

[6] Applied to major subdivisions platted after January 1, 2013 and site plans on lots 10 acres in area and greater

Chapter 10: Definitions and Measurement – Section 10.3.4.B.6: Lot Access

Requires lots to abut a public or private right-of-way. The lot does not abut a right-of-way. The plat creating the lot in 1977 illustrates a 15 foot easement for access.

“(6) Lot Access

- (a) *No lot shall be established which does not abut a public or private right-of-way as permitted in these regulations unless the parent parcel has been planned for development in which the resulting lots are provided direct access to a public or private right-of-way across common property perpetually maintained for such purposes. Examples include townhome, condominium, or multi-family developments, and office park and shopping center developments.*
- (b) *Every lot shall be configured so as to maintain at least 20 feet for ingress/egress of emergency service vehicles.”*

In 2007, Mr. Coulter requested a variance from lot size, lot width, and right-of-way requirements for the same lot in question. The Board of Adjustment denied the request, finding that the hardship was shared by the applicant and neighbors, therefore not meeting the criteria necessary to grant a variance.

Variance Criteria

The purpose of a variance is to allow certain deviations from the dimensional standards of the UDO (such as height, yard setback, lot coverage, or similar numerical standards) when the landowner demonstrates that, owing to special circumstances or conditions beyond the landowner’s control (such as topographical conditions, narrowness, shallowness, or shape of a specific parcel of land), a literal application of the standards would result in undue and unique hardship to the landowner and the deviation would not be contrary to the public interest.

A variance shall be approved on a finding the applicant demonstrates all of the following standards are met:

- (1) Strict compliance with the provisions of the Ordinance results in no reasonable use of the land;

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- (2) The alleged hardship is suffered by the applicant as a result of the application of this Ordinance;
- (3) The hardship relates to the applicant's land, rather than personal circumstances;
- (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- (5) The hardship is not the result of the applicant's own actions; and
- (6) The variance will neither result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land.

Staff Recommendation

Below are staff's suggested findings and recommendation.

- (1) Strict compliance with the provisions of the Ordinance results in no reasonable use of the land;
Suggested finding: Strict compliance with the provisions of the Ordinance **does** result in no reasonable use of the land as a building permit can not be issued.
- (2) The alleged hardship is suffered by the applicant as a result of the application of this Ordinance;
Suggested finding: The alleged hardship is suffered by the applicant **is** a result of the application of this Ordinance. The UDO considers this lot not be a "lot or record" and therefore can not be issued a building permit.
- (3) The hardship relates to the applicant's land, rather than personal circumstances;
Suggested finding: The hardship **does** relate to the applicant's land, specifically its size, width, and access.
- (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
Suggested finding: The hardship is **not** unique, or nearly so, rather than one shard by many surrounding properties. All lots in the county not considered to be a "lot of record" can be denied building permits pursuant to North Carolina General Statute §153A-334, including the other adjacent vacant lots created by the court order with the lot in question in 1977.
- (5) The hardship is not the result of the applicant's own actions; and
Suggested finding: The hardship **is** the result of the applicant's own actions. The property was divided by court order when the county had a zoning and subdivision ordinance regulating the property. The original property could have been legally subdivided through the subdivision process.
- (6) The variance will neither result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land.
Suggested finding: The variance will **not** result in the extension of a nonconformity nor authorize the initiation of a nonconforming use of land. The applicant is requesting relief from the existing nonconformities of the lot and will not increase any of the existing nonconformities.

Staff is recommending **denial** of this request as it does not meet all six criteria needed to be granted.

The County submits the following attachments:

1. Attachment 1: Variance application submitted December 7, 2012.
2. Attachment 2: Sections 3.4.4: SFR District and 10.3.4.B.6: Lot Access of the UDO.
3. Attachment 3: Plat Cabinet A, Page 106, recorded in the Currituck County Registered of Deeds office.
4. Attachment 4: Survey prepared by Coastal Engineering & Surveying, Inc. on February 3, 2006.

DISCUSSION

Cameron Tabor questioned how you would get to the property without a right of way.

Mr. Schuler stated that he has an easement to the property however; it is just not a buildable lot.

Christian Connor stated it was not legal at the time of record.

Mr. Schuler stated that was correct.

David Palmer asked if the court order took precedent over our ordinance.

Mr. Gallop advised it does not when it comes to zoning.

Lars Simonsen talked about the lot being a lot of record; a statue of the governing subdivision and zoning, but most counties use a UDO; he doesn't think he needs a variance, they need a correct interpretation of the ordinance; the lot is subject to zoning which we are going to use as residential however this is a partition of land and not a subdivision.

Mr. Gallop and Mr. Simonsen discussed how the property was divided, how a piece of property is a lot of record, and how the property must meet the zoning regulations at the time of record.

David Palmer asked if it meet the easement requirements.

Mr. Schuler stated that it does not apply to this section.

Mr. Gallop clarified that this is not an appeal. The board has to look to see if it fits in the variance requirements and does it meet the six finding of facts.

Mr. Gallop asked Mr. Simonsen if his client would be willing to continue the case to the next meeting to allow him the chance to meet with the county attorney Ike McRee.

Mr. Simonsen stated that his client would like to continue the case to allow time to meet with Mr. McRee.

ACTION

David Palmer motioned to continue the case til the February 14th meeting. Theresa Dozier 2nd the motion. Motion carried unanimously.

ADJOURNMENT

There being no further business to discuss Mrs. Dozier motioned for adjournment. Mr. Connor seconded the motion and the motion passed unanimously. The meeting adjourned at 9:35 p.m.

Respectfully Submitted,

Stacey Smith
Code Enforcement Officer