



Board of Zoning Appeals – Appeal VA# 9/29/17  
Hearing Date: November 28, 2017  
**Staff Review and Response**

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### **Case Summation**

TowerCom/Verizon submitted an Application for a Zoning Permit (“Application”) for a 155’ monopole style wireless telecommunications facility with a three foot lightning rod (“cell tower”) on May 4, 2017. The Application is attached (white binder).

The proposed tower site is located at 210 Walnut Street, Tax Map # 010-04-27-001. The site is zoned Industrial. The parcel is 20,187 square feet (0.46 acres) and is bordered by the old American Thread mill site and residential development on Hampshire and Walnut Street. The parcel is owned by JA Benfield Plumbing Inc.

The Town of Clover’s Zoning and Land Development Ordinance (“Ordinance”) permits the location of telecommunication towers on property that is zoned Industrial if the requirements of the Ordinance are met, including specific conditions for cell towers set forth in Section 3.2.

Following the staff’s initial review of the Application, additional information was requested from the applicant. The additional information is labeled Supplement #1 and #2 in the Application material (white binder). The Application was found to meet the requirements set forth in the Ordinance including requirements for setbacks, bufferyards, parking, driveways, and the conditions set forth in Section 3.2 of the Ordinance. Having met the criteria established by the Town’s Ordinance, TowerCom/Verizon had the right under the law to have the Zoning Permit Application approved, and the Town had the obligation under the law to issue it. The Zoning Permit Application was approved on September 14, 2017.

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### **Appeal and Staff Response**

An Appeal of the permit was filed by William Edward Dees Jr., 103 Hampshire Lane, on September 29, 2017. The Appeal is attached (black binder).

The Appeal by Mr. Dees of the issuance of a zoning permit to TowerCom/Verizon sets forth four pages of assertions, opinions and speculative observations that fall into five (5) broad categories, none of which support Mr. Dees’ conclusion that the issuance of the zoning permit should have been denied.

**1. Most of Mr. Dees’ Appeal revolves around assertions and conclusions that the zoning for the property is wrong because the property’s zoning differs from the proposed *future land use* of the property set forth in the Town’s Comprehensive Plan.**

Clover’s Zoning and Land Development Ordinance and Zoning Map were first adopted in 1971. The earliest Zoning Map that can be located is from 1975 which shows the property at 210 Walnut Street to be zoned Industrial. Every zoning map of the Town since 1975 shows the property to be zoned Industrial. The property has not been rezoned since at least 1975 based on records maintained by the Town of Clover.

The South Carolina Local Government Comprehensive Planning Enabling Act of 1994 requires municipalities and counties to adopt a Comprehensive Plan before adopting zoning ordinances. The 1994 Act does not require a local government to change zoning

to make it consistent with future land use planning when a Comprehensive Plan is adopted or updated. A Comprehensive Plan future land use plan is just that – a “plan”. A zoning ordinance with accompanying zoning map is a law. A plan is a plan – a law is a law.

The bulk of the matter set forth in Mr. Dees’ Appeal asserts and concludes that the cell tower should not be located on the property at 210 Walnut Street because the property is not shown as Industrial on the Comprehensive Plan future *land use* map. This is not relevant. How the property is zoned is the relevant consideration, and the property is zoned Industrial.

[As a point of information, staff found a Land Development Plan Supplement dated 1977 which shows the property as industrial use. The Comprehensive Plan adopted by Clover in 1997 shows the future land use plan for the property to be Industrial. The Comprehensive Plan adopted by the Town in 2005 shows the future land use plan for the property to be Industrial. The Comprehensive Plan adopted by the Town in 2012 shows the future land use plan for the property to be General Urban.]

**2. Mr. Dees asserts the zoning permit should not have been issued because the property once had a house on it and thus the property should be residential not industrial.**

The property has been zoned Industrial since at least 1975. Any house that was on the property has been gone since before 1991 as reflected by the York County tax assessors’ information. Any restrictive covenants on the property regarding residential use expired in 1980, and do not alter the zoning Ordinance or Zoning Map of the Town or the fact that the property is zoned Industrial. That there is or once was a residence on this or any property does not mean that property may only be zoned or used for residential. If the Town were to follow Mr. Dees’ logic, then, for example, the American Thread Mill could never be converted to any other use except manufacturing and the houses that were converted into businesses, e.g. Movie Mania, Flowers Plus, Palmetto House, etc., should have remained residential.

The property at 210 Walnut Street is zoned Industrial and subject to the uses and conditional uses for an Industrial zone set forth in the zoning Ordinance. One of the conditional uses set forth in the Ordinance on property zoned Industrial is for telecommunication towers, and TowerCom/Verizon’s Application has been found to meet the criteria in the Ordinance, thus giving it the right to erect a cell tower on the property. Placement of a cell tower on the property at 210 Walnut Street is a lawful use of the property. Issuance of the Zoning Permit was, and is, appropriate under the Town’s Zoning and Land Development Ordinance.

**3. Mr. Dees asserts the Town has acted wrongfully and illegally in issuing the zoning permit to TowerCom/Verizon.**

Most of what is set forth in this regard in Mr. Dees’ Appeal is purely speculation, conjecture and a “spin” on circumstances and chronology to fit his conclusions. There has been no inappropriate conduct by any Town employee in the handling of the TowerCom/Verizon application; TowerCom/Verizon has been afforded the same consideration any other applicant would be in an application for a zoning permit; and the criteria set forth in the Ordinance for issuance of the Zoning Permit have been found to

have been met. Issuance of the permit was proper under the Town's Zoning and Land Development Ordinance.

**4. Mr. Dees draws many of his points on this Appeal from what he asserts may have occurred with respect to a previous application for a zoning permit made by TowerCom/Verizon.**

The previous Zoning Permit Application was withdrawn by TowerCom/Verizon before any final decision was made. Any matters relating to a past application that was withdrawn have no relevance to the current Application, and whether the requirements of the zoning Ordinance have been met for the lawful issuance of a Zoning Permit based on the current application. The requirements of the Zoning and Land Development Ordinance – the Town's law - have been met and, accordingly, the Zoning Permit was issued.

**5. Mr. Dees' only assertion in the four pages of his Appeal that addresses the criteria for issuance of a permit set forth in Section 3.2 is that other property owners said their property was available.**

That other property may be available is not a criteria under Section 3.2 of the Ordinance. The part of Section 3.2 cited by Mr. Dees has to do with co-location on existing towers or use of other structures. Town staff found that TowerCom/Verizon submitted the necessary documentation called for under that part of the Ordinance – “coverage maps, letters from adjacent tower owners, and calculations from a specialist with appropriate radio frequency credentials”. See Tab 6 in the Application (white binder).

**Staff Response Conclusion**

Mr. Dees does not cite, or provide any support for, a specific failure of TowerCom/Verizon's application to meet any of the specific criteria in the Clover Zoning and Land Development Ordinance that would preclude issuance of the Zoning Permit. The Zoning Permit was lawfully and appropriately issued in accord and in compliance with the Town of Clover Zoning and Land Development Ordinance.

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**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:**

The Board of Zoning Appeals 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.