

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

### PUBLIC HEARING

#### Variance Application # CTV-05-01 Pegasus Tower Company, Applicant Harold K. Timmons., Applicant's Agent

**Meeting Date:** Monday, April 4, 2005

- Attachments:**
1. CTV-05-01 Application (with attachments)
  2. Staff Report
  3. Henderson County Communications Tower Ordinance
  4. List of Adjacent Property Owners
  5. Photos of the Subject Area
  6. Notice of Public Hearing

#### SUMMARY OF REQUEST:

Variance application #CTV-05-01, which was submitted on February 3, 2005, requests a wavier from the required submittal of Easement Acquisition Documents for a 199-foot communications tower proposed for property located on Judds Peak Road. Section 81-6 B(2)(a)[10] of the Communications Tower Ordinance requires: "Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant." The tower is proposed for a tract of land (parcel identification number of 00-9595-44-8747-55) owned by Mr. William R. Wilkes. The applicant is Pegasus Tower Company, and the applicant's agent is Harold K. Timmons.

Before taking action on the application, the Board of Commissioners must hold an evening public hearing. The hearing has been advertised in accordance the Henderson County Communications Tower Ordinance, the Henderson County Board of Commissioners Rules of Procedure for Quasi-Judicial Proceedings and State Law. Notices of the April 4, 2005, public hearing regarding variance application #CTV-05-01 were published in the Hendersonville Times-News on March 24, 2005 and March 31, 2005. The Zoning Administrator sent notices of the hearing via certified mail to the applicant, the owner of the property on which the tower is planned to be located (the Subject Property) and owners of properties adjacent to the tower site on March 23, 2005. The Zoning Administrator posted signs advertising the hearing on the Subject Property and at the intersection of Judds Peak Road and Pace Mountain Road as well as the intersection of Pace Mountain Road and Hwy 176 on March 23, 2005.

#### COUNTY MANAGER'S RECOMMENDATION / BOARD ACTION REQUESTED:

Following the public hearing, Board action to approve, modify or deny variance application #CTV-05-01 would be appropriate.

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## Henderson County Planning Department Staff Report

### Variance Application #CTV-05-01 Pegasus Tower Company, Applicant Harold K. Timmons, Agent

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#### 1. Introduction:

- 1.1 Applicant: Pegasus Tower Company
- 1.2 Applicant's Agent: Harold K. Timmons
- 1.3 Subject Parcel PIN #: 00-9595-44-8747-55
- 1.4 Application Date: February 3rd, 2004 (Please see attachment 2)
- 1.5 Request: Wavier from the Easement Acquisition Documents that are required to be submitted for a 199-foot monopole communications tower proposed for property located on Judds Peak Road. The Henderson County Communications Tower Ordinance, Section 81-6 B(2)(a)[10] requires this easement for the permit to be approved. (Please see Attachment 3: Henderson County Communications Tower Ordinance)
- 1.6 Subject Area Size: Approximately 1.16 acres (hereafter the Subject Parcel/Property or Subject Area)

#### 2. Location:

- 2.1 Please See Attachment 3: Vicinity / Current Zoning Map
- 2.2 The Subject Property is located off U.S. 176 on Judds Peak Road (SR 1837). Judds Peak Road (SR 1837) is approximately 1.5 miles from the intersection of U.S. 176 and Pace Mountain Road (SR 1832).
- 2.3 The Subject Property is located off Pace Mountain Road (SR 1832) 1000 feet (approximate) north from where Pace Mountain Road intersects with Judds Peak Road (SR 1837) on the left side of the street.
- 2.4 The property fronts onto Judds Peak Road (SR 1837).
- 2.5 The Subject Property is not located within flood hazard area and is not located within a water supply watershed.

### 3. Current Zoning:

3.1. The Subject Area is within the Open Use (OU) District.

#### 3.2 Adjacent Zoning:

3.3 The Subject Area is surrounded on the north, south, east and west by a County OU zoning district.

3.1.1. The Subject Area is also located in close proximity to the City of Saluda.

#### 3.2. General Information:

3.2.1. A Communications Tower application (level 2 - Category 4) was received in the County Zoning Office on December 20, 2004.

3.2.2. The application was not accepted for failure to submit all information required.

3.2.3. The application and fees were returned to the applicant on January 10, 2005.

3.2.4. The return package included a detailed letter on items that were not complete. (Please see attachment 4)

3.2.5. The Henderson County Communications Tower Ordinance, Section 81-6B[10] Easement acquisition documents. states the following:

“Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant. If such application is subsequently approved, the permit will be conditioned on the easement documents being recorded in the Henderson County Register of Deeds Office. The applicant must submit copies of the recorded easements to the Ordinance Administrator. Failure to secure and record the easements will constitute noncompliance and will be grounds for revocation of the permit as provided in § 81-11.”

3.2.6. The application did not specify the exact location of the proposed Communications Tower on the Subject Property, only a tentative location. Therefore, when determining what properties fell within the distance from the proposed tower that was equal to the tower height, the Communications Tower Ordinance Administrator (“Ordinance Administrator”) took the conservative approach and used a radius of 200 feet from each of the five Subject Property boundaries. (Please see attachment 5).

3.2.7. This radius took in a property owned by Rood, Karol Kay, Trustee. The parcel number is 00-9595-54-1642-55 and is directly across Judds Peak Road from the proposed communications tower site.

- 3.2.8. On December 20, 2004, the zoning office received a letter from Ms. Rood stating she would not agree to the easement required by the Henderson County Communications Tower Ordinance, Section 81-6 B(2)(a)[10] . (Please see attachment 6)
- 3.2.9. On February 3, 2005 a request was received in the County Zoning Office from Harold K. Timmons (agent for Pegasus Tower Company) for a variance (Please see attachment 2) from the required submittal of Easement Acquisition Documents for a 199-foot monopole communications tower proposed for property located on Judds Peak Road.
- 3.2.10. On March 23, 2005, the Ordinance Administrator posted the property and two intersections to inform the public of the upcoming hearing scheduled for April 4, 2005. A sign was public hearing notice sign was place at the intersection of U.S. 176 and Pace Mountain Road (SR 1832), and another one at the intersection of Judds Peak Road (SR 1837) and Pace Mountain Road (SR 1832). Posting of the property is not a requirement but was done to ensure proper notice to all parties affected by this variance request.
- 3.2.11. On March 23, 2005, the Ordinance Administrator sent notices of the April 4, 2005 public hearing by certified mail to the applicant, the owner of subject property, and all owners of property owners adjacent to the Subject Property. (Please see attachment 7)
- 3.2.12. On March 24, 2005, and again on March 31, 2005, the Ordinance Administrator published legal notices of the April 4, 2005 public hearing in the Times-News. (Please see attachment 8)

#### **4. Staff Comments and Recommendations:**

- 4.1. The Ordinance Administrator is not in support of the variance request for the following reasons:
  - 4.1.1. The County Zoning Office received a letter from a property owner stating she would not sign the required easement document. (Please see Section 3.2.7, above)
  - 4.1.2. The applicant has had discussions with the City of Saluda about locating the same communications tower on a parcel of land within 1000 feet of the Subject Property site. The City of Saluda then satellite annexed that parcel (property identification number 00-9595-65-2640-55) (Please see attachment 9) for the purpose of placing a communications tower on this particular piece of property.

4.1.3. The intent of Section 81-6.B(2)(a)[10] of the Communications Tower Ordinance is to give property owners within the closest proximity of a proposed tower a right to prevent the siting of the tower by refusing to provide the required easement. The easement acquisition documents are, therefore, an integral part of the application process for a Communications Tower.

4.1.4. Section 81-10 of the Communications Tower Ordinance covers the procedures for variance requests and the findings and conclusions that the Board of Commissioners must make in order to grant a variance. It states:

“Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Board of Commissioners may authorize a variance, if such variance can be made without compromising the intent of this chapter. Notwithstanding the foregoing, no variance may be issued allowing the modification of any height restriction or limitation contained in this chapter.”

It also states:

“The Board of Commissioners shall consider the public health, safety and welfare when ruling on applications for variance. Any grant of a variance pursuant to this § 81-10 must be based upon specific findings of the fact made by the Board that support the following conclusions:

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.
- (2) The variance applied for is in harmony with the general purpose and intent of this chapter and preserves its spirit.
- (3) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.”

4.1.5. The Ordinance Administrator does not think that the variance application, as submitted, provides the Board of Commissioners with the facts it needs to make the necessary findings and conclusions to grant the variance.



**PEGASUS TOWER**

## Attachment 2

P.O. Box 233 • Richlands, Virginia 24641 USA  
276-964-7416 voice • 276-963-2587 fax

February 1, 2005

Natalie Berry  
Zoning Administrator  
Henderson County Planning Department  
101 East Allen Street  
Hendersonville, North Carolina 28792

**Re: Proposed Communications Tower – Parcel # 00959544874755**

Dear Mrs. Berry:

Enclosed are documents regarding an application to request the consideration of a Variance from Section 81-6 B(2)(a)[10], Easement Acquisition Documents, from the Henderson County Board of Commissioners. Under separate cover a check in the amount \$100.00 is being sent overnight mail to your attention.

Pegasus Tower Company would like to request that this matter be placed on the February 16, 2005 Board of Commissioners agenda. Pegasus Tower Company is aware that the matter has to be advertised in the local newspaper for two consecutive weeks. If the matter is forwarded to the Times-News by noon Thursday, February 3, 2005 it can run in the Sunday, February 6, 2005 publication. This will allow the first notice of the meeting to occur at the minimum requirement of 10-days prior to the meeting. The second notice could run during the following week to comply with the advertising requirements. The documents provided are in compliance with the attached Variance checklist obtained from the Henderson County web site. Enclosed are the following documents:

- Completed Variance Application
- Layout Illustration Map
- Variance Checklist
- Tower Engineering Certification Letter
- Copy of Site Plan
- Adjacent Property Owner List

Should you need any additional information or clarification regarding this request, please feel free to contact me on 276.971.3908.

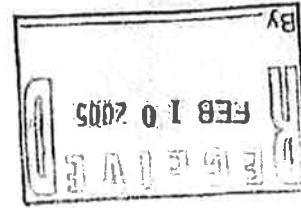
Sincerely,

Harold K. Timmons  
Zoning Coordinator  
Pegasus Tower Company

**RECEIVED FEB 03 2005**

Application No. STV-05-01

COUNTY OF HENDERSON  
STATE OF NORTH CAROLINA  
APPLICATION FOR A VARIANCE



2      1      2005  
Month      Day      Year

Applicant: Pegasus Tower Company Phone: 276-971-3908  
Address: P.O. Box 233, Cedar Bluff VA, 24641  
Property Owner's Name (if different from above): William R. Wilkes  
Property Address (if different from above): 190 Broyles Road, Hendersonville, NC 28791  
Parcel ID Number: 00959544874755 Zoning District: \_\_\_\_\_

Directions to property from Hendersonville: Judds Post Rd to Race Mtn. Rd, left on Main Page Rd to Greenville St., to US 176. US 176 west (to Hendersonville) to intersection with US 25; right on Main St., rt. at Allen St., one block to Co. Office.

TO THE HENDERSON COUNTY BOARD OF COMMISSIONERS:

I, Pegasus Tower Company (Harold - Contact) (owner/agent) hereby petition the Board of Commissioners for a VARIANCE from the literal provisions of the Zoning Ordinance of Henderson County because I am prohibited from using the parcel of land described in the form "Zoning Permit Application" in a manner shown by the Site Plan. I request a variance from the following provisions of the ordinance (cite section numbers): Section 81-6 B(2)(a) L107

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Board of Commissioners does not have unlimited discretion in deciding whether to grant a variance. The Board is required to reach three conclusions as a prerequisite to the issuance of a variance: (a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance, (b) that the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, and (c) that in granting the variance, the public safety and welfare have been assured and substantial justice has been done. In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Board that it can properly reach these three required conclusions:

(a) **THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE.** The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

(1) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

SEE ATTACHED

# Attachment 2

Application for a Variance  
Page 2

(2) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)

SEE ATTACHED

(3) The hardship is not the result of the applicant's own actions.

SEE ATTACHED

(b) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

SEE ATTACHED

(c) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

SEE ATTACHED

(Please continue remarks on separate page if necessary.)

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

Arnold Johnson, zoning Mgr.  
Signature of Applicant Repre. Pegasus Tower Co.

2.1.2005

Date

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND THE ZONING ORDINANCE OF HENDERSON COUNTY, THE ORDINANCE SHALL PREVAIL.

Received By Natalie J. Berry  
100.00 pd by Check 9021  
Foc Paid

2-10-2005

Date

2-15-2005

Date Received



## VARIANCE APPLICATION ATTACHMENT FOR REQUEST FOR RELIEF FROM SECTION 81-6b(2)(A)[10]

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**(a) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE.** The courts have developed three rules to determine whether in a particular situation "practical difficulties or unnecessary hardships" exist. State facts and arguments in support of each of the following:

**(1) If he complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)**

Compliance with the strict letter of the Ordinance prohibits the use of this property for a communications tower. The parcel may still be useable for other purposes. The use of the property for a tower is a reasonable use and can be accomplished without harm or injury to surrounding properties. The demand of the aforementioned requirement imposes an unnecessary hardship because the tower can be designed in a manner that does not endanger the health, safety and general welfare of area residents. The spirit and intent of the Ordinance is also promoted through the provision of a structure that would remain on the property in the event of catastrophic failure.

**(2) The hardship of which the applicant complains results from unique circumstances related to the applicant's land. (Note: Hardships suffered by the applicant common with his neighbors do not justify a variance. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the land.)**

The hardship we are requesting relief from involves consideration of the unique needs and demands of the telecommunications industry. Specifically, wireless service providers need support structures to be able to cover large geographic areas and make connections with other support structures holding their equipment. The characteristics of the technology dictate where and how the signal can be delivered and the degree of effectiveness. By connecting one location with another, seamless wireless coverage is obtained and dropped calls are avoided or reduced. The ability to make these connections is directly related to the location of the support structure and the height that the equipment can be located upon that support structure. In this instance the property owner's land is adequate in size to meet the physical setback requirements of the Ordinance; however, it is the unique requirement that an easement be obtained from landowners owning land within the distance of the tower height that creates a unique hardship. This requirement is only applied to communication towers and since most towers can be designed to collapse upon the property it is located on without encroaching upon an adjacent landowners property, it is for practical purposes, unnecessary. The need for the requirement is also unique to the community since no other properties in this immediate area have a tower on them and do not have to meet this standard. Our proposed tower will be designed to allow the tower to collapse upon itself and stay within the boundaries of the subject property thereby having no discernable impact on the adjacent properties. In general, this provision of the Ordinance grants a landowner the ability to prevent or deny a neighbor the ability to use his property as he chooses provided all the other requirements of the Ordinance can be complied with.

**(3) The hardship is not the result of the applicant's own actions.**

The hardship we seek relief from is the result of Ordinance requirements that empowers adjacent landowners with the ability to approve or deny a landowners use of his property by requiring the granting of an easement as a part of an approval process. Many landowners do not want unnecessary easements to encumber their property. The need to encumber someone else's land due to a use that is not on one's property is very unpopular. This is especially true when there are other alternatives to achieving community safety without placing an easement of someone's property. Our tower can be designed to collapse on the subject parcel and avoid impacting the adjacent landowner's property. In this sense, the requirement in question creates an unnecessary hardship as well as requiring the creation of an unnecessary encumbrance on another landowner's property. None of the landowners in this area have indicated that they are opposed to a tower on this property. One landowner has indicated in writing that they would not grant an easement on their property in accordance with the subject Ordinance regulation. Without the Ordinance providing a means for relief to the easement requirement there is no other form or relief available other than a variance. The height of the tower is what is needed by the wireless client to make this location work. The lowering of the height of the tower would decrease the radius of the tower and consequently the number of landowners from

## VARIANCE APPLICATION ATTACHMENT FOR REQUEST FOR RELIEF FROM SECTION 81-6b(2)(A)[10]

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whom easements would be needed. However, the tower would have to be reduced to around 108' in order for a radius equal to its height to fit entirely on the parcel and avoid the need for any easement. At the aforementioned height, the wireless service provider would not be able to utilize the structure, as it would only provide a minimum level of service from this location which defeats the purpose of constructing the structure.

**(b) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT.** (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

The granting of the requested variance would be in harmony with the Ordinance's general purpose and spirit and intent. The general purpose of the subject Ordinance provision is to make adjacent landowners aware of the proposed tower and the potential for the tower to fall upon your property. By granting an easement, the adjacent landowner acknowledges that he/she is aware of this potential and agrees to accept it. In general, the requirement assists with keeping adjacent landowners safer by informing them of the potential for harm. The required processes and procedures of Henderson County for obtaining a tower permit require that adjacent landowners and those within 1320' of the proposed tower location be informed of the proposal to seek a tower permit. Through this process adjacent landowners and others are made aware of proposals to place a tower on a property. By designing a tower to collapse within a pre-determined radius of fall, we are able to keep the tower and all of its accompanying parts on the parcel where the tower is located. Through structural engineering modifications the adjacent landowners, along with the community in general, can be safer by the improvements that can be designed into the structure. This alternative results in greater overall safety for all. Our need to incorporate a shorter fall area radius in the proposed tower allows for a more proactive effort towards protecting the health, safety and general welfare of the surrounding landowners and community.

**(c) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE.** (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

The area immediately around the proposed tower is not a heavily developed area. Adjacent landowners and others that have been notified of our proposal have not responded in a manner that indicates they are opposed to our proposal. Two wireless service providers have targeted the general area for improved wireless service. The community benefits from improved coverage since it is more beneficial to you as a customer to operate in your service providers network than it is to roam on another carrier's network. In this sense the customer benefits and the community benefits since many of the residents already use these systems or will utilize them. The enhanced design of the tower makes for a much stronger and safer tower than would be required if only designed to fall within the total area of the tower's radius. Although there have been no reported incidents of monopole tower failure since they have been put into use, structural modifications allow for different tower failure characteristics. Our design would be a very stringent design as the overall collapse area would be in the neighborhood of sixty-three (63) feet, which keeps the tower entirely on the Wilkes property. Therefore we believe that the granting of the variance improves the general safety of the community when a tower is designed as we have proposed. The safety of the community far outweighs any precedent that may be established by granting the requested variance. If a precedent is established it is one that favors community safety without compromising community awareness and notification.



**valmont**

December 21, 2004

Ms. Sidney Ballard  
Pegasus Tower Company, LTD  
P.O. Box 233  
Richlands, VA 24841

RE: Saluda, North Carolina  
195' Tapered Monopole  
Proposal 2020283 Rev. 000

Dear Ms. Ballard,

Thank you for your inquiry concerning our ability to design and manufacture a 195 ft. Monopole for your Saluda, North Carolina site. The monopole will have the capacity to support five cellular/PCS carriers and meet the wind speed required by all federal, state, and local codes.

Valmont Communications has been designing and building guyed and self-supporting towers and monopoles since the early 1950's. During this time, we have sold thousands of towers ranging in height from as little as 50' high to in excess of 1400'. These towers were individually engineered to accommodate the loading requirements imparted by the design wind speed, ice considerations, antenna loading, and other factors dictated by the national code requirements existing at the time the tower was built.

The present national tower code, ANSI/EIA/TIA-222-F, represents the latest refinement of specific minimum requirements for tower engineers and manufacturers to follow to help assure that the tower structure, and its foundations are designed to meet the most realistic conditions for local weather while assuring that the tower is designed to stringent factors of safety.

North Carolina uses the International Building Code (IBC) which represents the latest refinement of specific minimum requirements for engineers and manufacturers to follow to help assure that the structure and its foundation are designed to meet the most realistic conditions for local weather while assuring that the structure is designed to stringent factors of safety.



Communications Division, Valmont Industries, Inc.  
1545 Pineda Drive Plymouth, Indiana 46363-4005 USA  
574-936-4221 Fax 574-936-6796 www.valmont.com



While failure is extremely rare in any kind of tower, it is especially so for self supported towers and monopoles. In fact, only if a tower or monopole were subjected to a direct hit from a tornado or the severest of hurricanes would failure be predicted, and then usually only if hit by flying debris.

We are aware of only a very few documented instances of a self supporting tower or monopole failure. Self supporting towers and monopoles can be designed such that the most common mode of failure is in the upper middle region of the tower, with the upper portion of the tower remaining connected and "bending and bowing over" against the base of the tower or pole. The fact that the wind is normally greater on the upper portion of the structure contributes to the likelihood of this type of failure. This monopole for the Saluda site has been designed with a theoretical fall zone of 60 feet or less.

Needless to say, the engineering codes which govern tower and monopole designs are extremely conservative. This monopole is designed for extreme wind conditions, and even under these extreme conditions stringent factors of safety are required.

As Chief Engineer of the company and a licensed P.E. in 44 states, I oversee all engineering and application of our towers. I am a graduate engineer from Purdue University and have been Chief Engineer of the company since 1990. I am assisted by two other licensed professional engineers, Mr. John Erichsen who has been with the company since 1984 and Mr. Myron Noble who has been with the company since 1973. Several other qualified engineers are also on our staff.

All Valmont welders are AWS and CWB qualified. Valmont Communications is both an AISC certified shop and also a Canadian CWB certified shop.

We trust the above and the attached will be helpful to you. If you should need anything else, please let us know at your convenience.

Sincerely,

William B. Rettig, P.E.  
Chief Engineer  
Extension #5231



DEC 21 2004



Communications Division, Valmont Industries, Inc.  
1545 Pidea Drive Plymouth, Indiana 46563-4005 USA  
574-936-4221 Fax 574-936-6796 www.valmont.com

## Attachment 2

James T. Wilkes, Jr. Executor  
James T. Wilkes, IV  
7810 Midnight Pass Road  
Sarasota, FL 34232-2718

Martha L. Duncan & Martha B.  
Johnson  
1322 Cabrollo Drive  
Florence, SC 29505

James T. Wilkes, IV & William R.  
Wilkes  
160 Broyles Road  
Hendersonville, NC 28791

J. Neil Rood & Karol Kay Rood  
12192 Mandarin Road  
Jacksonville, FL 32223

Karol Kay Rood, Trustee  
Karol Kay Rood NC PER RES TRUST  
12192 Mandarin Road  
Jacksonville, FL 32223

Charles B. Lewis & Darlene M.  
Lewis  
174 Judds Peak Road  
Saluda, NC 28773-9734

Freiderich W. Ermath & Wife  
9533 Old Creek Road  
Fairfax, VA 22032

Holly Ann Wilkes  
102 Judds Peak Road  
P.O. Box 756  
Saluda, NC 28773



## Chapter 81, COMMUNICATIONS TOWERS

[HISTORY: Adopted by the Board of Commissioners of Henderson County 3-2-1998.  
Amendments noted where applicable.]

### GENERAL REFERENCES

Mountain ridge protection -- See Ch. 121.

Subdivision of land -- See Ch. 170.

Zoning -- See Ch. 200.

### § 81-1. Statutory authority; purpose.

- A. This chapter is enacted pursuant to the general police powers granted to Henderson County by North Carolina General Statutes 153A-121 and Article 18 of Chapter 153A.
- B. The purpose of this chapter is to protect the health, safety and welfare of citizens of Henderson County.

### § 81-2. Jurisdiction. [Amended 8-20-2003]

The provisions of this chapter shall apply to the unincorporated areas of Henderson County lying outside of the extraterritorial jurisdiction of any incorporated city or town to the extent provided by the Henderson County Zoning Ordinance [see Chapter 200 of the Henderson County Code, as amended or replaced). This chapter shall apply within the incorporated areas and extraterritorial jurisdiction of any city or town specifically requesting its enforcement by Henderson County upon the agreement of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122 and 160A-360.) If the County's Zoning Ordinance is also in effect within said incorporated areas and extraterritorial jurisdiction, then this chapter shall only apply within said incorporated areas and extraterritorial jurisdiction to the extent provided by the County's Zoning Ordinance.

### § 81-3. Definitions.

The following words, terms and phrases shall have the specific meanings ascribed to them herein. All other words, terms and phrases shall have their ordinary meanings of common usage in the English language.

ANTENNA -- Any exterior transmitting or receiving device which radiates or captures electromagnetic waves.

**ALTERNATIVE STRUCTURE** -- A structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. Alternative structures include, but are not limited to, buildings, water tanks, pole signs, billboards and electric power transmission towers.

**COLLOCATION** -- The placement of an additional antenna on an existing tower, including required support equipment and buildings at the base of the tower and any necessary modification to the structure of the existing tower.

**COMMUNICATIONS TOWER (or TOWER)** -- Any tower, pole or similar structure 50 feet or more in height, used to support one or more antennas, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, personal communications service towers (PCS), microwave towers, common-carrier towers, cellular telephone towers and alternative structures.

**OCCUPIED BUILDING** -- Any residential dwelling or other building which is inhabited on a regular basis by one or more persons. Such buildings include, but are not limited to, residences, schools, churches, other buildings for public assembly, hospitals and clinics, commercial and industrial entities, etc. Such buildings must have been in existence, or otherwise be under a validly issued building permit, at least 30 days prior to the date of a tower permit application in order to be considered an occupied building as defined in this chapter.

**ORDINANCE ADMINISTRATOR** -- The Henderson County official assigned by the County Manager or Board of Commissioners to enforce this chapter.

**PERMIT** -- The permit issued by the Ordinance Administrator as designated by this chapter, to an individual, corporation, partnership or other entity to construct a communications tower, to collocate an antenna on an existing tower, to locate an antenna on an alternative structure or to replace an existing tower as required by this chapter.

**PROTECTED MOUNTAIN RIDGE** -- A ridge with an elevation of 500 feet or more above the elevation of an adjacent valley floor.

**REPLACEMENT TOWER** -- A new communications tower intended to replace an existing tower where such new tower is sited as close to the existing tower as is reasonably feasible, but in no event more than 100 feet from the base of the existing tower, and no higher than the height of the original tower.

**TOWER** -- See "communications tower."

**TOWER, REPLACEMENT** -- See "replacement tower."

**TOWER BASE** -- The foundation, usually concrete, on which the tower and other support equipment is situated. For measurement calculations, the tower base is that point on the foundation reached by dropping a perpendicular from the geometric center of the tower.



**TOWER HEIGHT** -- The vertical distance measured from the tower base to the highest point of the tower, including any antenna, lighting or other equipment affixed thereto.

**TOWER SITE** -- The land area which contains or will contain a proposed tower, support structures and other related buildings and improvements.

**§ 81-4. Tower categories.**

This chapter places towers and tower activities into six categories, as follows:

- A. Category 1: exempt towers. Towers constructed or permitted prior to the effective date of this chapter, towers for residential, amateur radio or governmental use which are less than 80 feet in height or any tower (including replacement towers) less than 50 feet in height are exempt from the terms of this chapter. If an antenna mounted on an alternative structure does not extend more than 20 feet higher than the alternative structure, such construction is exempt from the terms of this chapter. If collocation of an antenna on an existing tower results in the tower height not increasing by more than 20 feet, such construction is exempt from the terms of this chapter. Exemption herein does not constitute exemption from any other applicable federal, state or local law or regulation.
- B. Category 2: collocation. Henderson County requires collocation of antennas on existing communications towers where collocation opportunities are available. Upon enactment of this chapter, any person, corporation, partnership or other entity which intends to collocate on an existing communications tower within the jurisdiction of this chapter, where such collocation results in the tower height increasing by more than 20 feet, shall first obtain a permit from the Ordinance Administrator in accordance with the terms of this chapter. (See § 81-6A, Level 1 permits, for review procedure.)
- C. Category 3: towers for residential, amateur radio or governmental use. Upon enactment of this chapter, any person, corporation, partnership or other entity which intends to construct a communications tower, within the jurisdiction of this chapter, which is 80 feet or more in height and which is intended for residential, amateur radio or governmental use shall first obtain a permit from the Ordinance Administrator in accordance with the terms of this chapter. (See § 81-6B, Level II permits, for review procedure.)
- D. Category 4: new communications towers. Upon enactment of this chapter, any person, corporation, partnership or other entity which intends to construct a new communications tower within the jurisdiction of this chapter shall first obtain a permit from the Ordinance Administrator in accordance with the terms of this chapter. (See § 81-6B, Level II permits, or § 81-6C, Level III permits, as applicable, for review procedure.)
- E. Category 5: location of antennas on alternative structures. Upon enactment of this chapter, any person, corporation, partnership or other entity which intends to mount an antenna on an alternative structure that would add more than 20 feet to the height of the alternative structure

within the jurisdiction of this chapter shall first obtain a permit from the Ordinance Administrator in accordance with the terms of this chapter. (See § 81-6A, Level I permits, for review procedure).

- F. Category 6: replacement towers. Upon enactment of this chapter, any person, corporation, partnership or other entity which intends to construct a replacement tower which is 50 feet or greater in height within the jurisdiction of this chapter shall first obtain a permit from the Ordinance Administrator in accordance with the terms of this chapter. (See § 81-6A, Level I, for review procedure.) The replacement tower shall be placed as close to the existing tower as is reasonably feasible, but in no event farther than 100 feet from the existing tower. The existing tower being replaced shall be removed within 90 days of completion of the replacement tower.

**§ 81-5. Standards for new communications towers.**

Tower owners should always exercise best efforts in the placement of communications towers so that they have minimal impact on adjacent residents and landowners. The following standards shall be in effect for all new towers, and compliance therewith is required for all new towers and shall be conclusive proof of best efforts on the part of tower owners. Note that, in most cases, the standards are more relaxed for monopole towers.

- A. Separation from existing communications towers. New monopole towers shall be located at least 0.5 mile from any existing or permitted tower of any type (monopole, lattice or guyed) which is greater than 150 feet in height. New lattice or guyed towers shall be located at least one mile from any existing or permitted tower, of any type, which is greater than 150 feet in height.
- B. Separation from occupied buildings. New monopole towers shall be separated from occupied buildings by a distance equal to 75% of the height of the proposed tower. New lattice or guyed towers shall be separated from occupied buildings and other structures by a distance equal to the height of the proposed tower. However, the required separation area for all types of new towers may include occupied buildings if the applicant obtains affidavits of understanding or similar documents from the owners of property containing the buildings. Such affidavits or other documents shall state that the property owners do not object to the construction of the tower as proposed in the application and agree to hold Henderson County harmless from any and all liability for the location and construction of the tower as proposed in the application. Such affidavits should also cite the specific plan or drawing reviewed by the property owner.
- C. Lighting. No permanent or strobe lights shall be allowed on the tower unless required by federal, state or local law or regulation. Ground level security lighting may be permitted if designed to minimize impacts on adjacent properties.
- D. Color. Towers shall be light gray or any other color that blends into the environment in which

the tower is located, except when otherwise required by applicable federal and state law or regulations.

- E. Signs. A sign which includes the name of the tower owner/operator and a telephone number for emergencies shall be displayed in a visible location near the tower. No sign may be placed on the tower for commercial advertisement purposes. "Warning" and "no trespassing" signs are permitted and encouraged.
- F. Fencing. The base of any tower shall be surrounded by a secured fence or an enclosed wall of at least eight feet in height.
- G. Compliance with federal and state regulations. The applicant shall be required to provide documentation satisfactory to the Ordinance Administrator of compliance with all applicable federal and state law and regulations.
- H. Siting towers on protected mountain ridges. The height of any new monopole tower proposed for a protected mountain ridge, as defined, shall not be greater than 30 feet above the existing vegetative canopy (tree line) adjacent to the tower site. The height of new lattice or guyed towers proposed for a protected mountain ridge shall not be greater than 20 feet above the existing vegetative canopy adjacent to the tower site. For purposes of this chapter, the vegetative canopy shall be the average tree line height within 500 feet of the tower site or, if no such adjacent vegetation exists, then the canopy shall be set at 40 feet.
- I. Design to accommodate additional user. All new communications towers shall be designed to accommodate at least one additional user.
- J. Option to county on collocation opportunity. For all new towers, the applicant shall give Henderson County the option of collocating, for governmental use, an antenna on the new tower at fair market value, if technically feasible and if requested by Henderson County in writing within 30 days of the submission of a permit application.

**§ 81-6. General permit requirements.**

This chapter allows for three different levels of permit application, review and approval, depending on the category of the proposed tower or tower modification. They are as follows:

A. Level I permits.

- (1) Level I permit requirements apply to the following towers or tower activities:
  - (a) Collocation (Category 2).
  - (b) Antennas on alternative structures (Category 5).
  - (c) Replacement (Category 6).

- (2) In order to obtain a Level I permit, the applicant shall submit the following items to the Ordinance Administrator:
  - (a) Application.
    - [1] An application form. (See Appendix 1.<sup>EN(1)</sup>)
    - [2] A permit fee as set forth by the Henderson County Board of Commissioners on a fee schedule.
    - [3] A sketch plan in sufficient detail to show the location of the tower, the foundation, accessory structures and antennas within the tower site.
    - [4] A structural engineering certification, signed and sealed by an active, registered, North Carolina professional engineer, certifying the structural integrity of the tower and the tower base.
  - (3) Review procedure. If an application for a Level I permit meets the requirements of this chapter, the Ordinance Administrator shall issue a permit for the tower. The Ordinance Administrator shall have 10 business days from the date a complete application is filed to issue or deny the permit. If the Ordinance Administrator has reason to deny a permit, the Ordinance Administrator shall notify the applicant of the nonconformity which could cause a denial and give the applicant 10 business days to cure the nonconformity. If the applicant fails to cure the nonconformity within 10 business days, the Ordinance Administrator shall deny the permit, and such denial shall be made in writing and shall be accompanied by the reasons stating why the permit was denied.

B. Level II permits.

- (1) Level II permit requirements apply to the following towers or tower activities:
  - (a) Residential, amateur radio or governmental (Category 3).
  - (b) New towers which are 50 feet or more in height, but less than 300 feet in height (Category 4).
- (2) Towers permitted under Level II requirements shall comply with the standards contained in § 81-5. In order to obtain a Level II permit, the applicant shall submit the following items to the Ordinance Administrator:
  - (a) Application.
    - [1] An application form. (See Appendix 2.<sup>EN(2)</sup>)
    - [2] A permit fee as set forth by the Henderson County Board of Commissioners on a fee schedule.
    - [3] A tower profile, with dimensions, which shows the proposed tower, the

foundation, accessory structures and antennas.

- [4] A structural engineering certification, signed and sealed by an active, registered, North Carolina professional engineer, certifying the structural integrity of the tower and the tower base.
- [5] A site plan. Such plan shall be prepared by an active North Carolina registered land surveyor, registered professional engineer or registered landscape architect and shall contain the following information:
  - [a] The names, addresses and telephone numbers of the applicant and the property owner.
  - [b] The plan scale, a North arrow and a vicinity map.
  - [c] Tax parcel identification number for any parcel of land containing the tower site and the tower's latitude and longitude coordinates.
  - [d] The name, address, signature and seal of the person who prepared the site plan.
  - [e] The surveyed boundary lines of any parcel or portion thereof that will contain the proposed tower. Such boundary lines shall be surveyed by an active North Carolina registered land surveyor.
  - [f] The general location of boundary lines of any parcel or portion thereof within a radius from the tower base equal to the proposed tower height.
  - [g] The names and tax parcel identification numbers of all owners of property immediately adjacent to any parcel containing the tower site.
  - [h] All identifiable buildings and other structures (including existing towers), roads and perennial streams located on the parcel containing the tower site and within a radius from the tower base equal to the tower height.
  - [i] The tower base and the foundations for all guyed line anchors and support structures, all proposed buildings, accessory structures and any other proposed improvements, including roads and utilities serving the proposed site.
  - [j] The ground elevation of the base of the proposed tower to the nearest foot.
- [6] Statement regarding accommodation of additional user. The applicant shall submit a document signed and sealed by an active, registered, North Carolina professional engineer which indicates that the proposed tower will accommodate at least one additional user.

- [7] Statement regarding collocation. The applicant shall submit a written statement which indicates that he is willing to allow future collocations and will make space available at fair market value.
  - [8] Evidence of mailing of notices of intent. The applicant must submit documentation which shows that the applicant has sent required notices of intent to file an application for a communications tower permit to all owners of property immediately adjacent to the parcel containing the tower site, as well as to all owners of property within a radius measured from the tower base equal to twice the tower height. Such notice of intent shall include the following: a vicinity map showing the proposed tower location; a sketch of the tower with dimensions which indicates the proposed tower type and height; and a general statement from the Ordinance Administrator outlining the procedure by which the proposed tower may be permitted. (See Appendix 4<sup>EN(3)</sup> for sample.) Such notices shall be mailed no fewer than 10 days and no more than 30 days prior to the date on which an application for a tower permit is filed.
  - [9] Evidence of lack of alternative antenna sites. The applicant must provide written documentation which shows that a reasonable effort has been made to collocate a proposed antenna for a communications tower on an existing tower or alternative structure and that there are no feasible alternatives to constructing the proposed tower because the owner of an existing tower or alternative structure which could be used for an antenna is unwilling or unable to allow the collocation or because no tower or structure exists which: could provide coverage to the proposed service area; or is structurally capable of supporting the intended equipment; or is the proper height; or would not cause frequency interference.
  - [10] Easement acquisition documents. Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant. If such application is subsequently approved, the permit will be conditioned on the easement documents being recorded in the Henderson County Register of Deeds Office. The applicant must submit copies of the recorded easements to the Ordinance Administrator. Failure to secure and record the easements will constitute noncompliance and will be grounds for revocation of the permit as provided in § 81-11.
  - [11] Evidence of compliance with federal and state regulations. The applicant shall be required to provide documentation satisfactory to the Ordinance Administrator of compliance with all applicable federal and state regulations.
- (3) Procedure for review. If an application for a Level II permit meets the requirements of this chapter, the Ordinance Administrator shall issue a permit for the tower. The

Ordinance Administrator shall have 15 business days from the date a complete application is filed to issue or deny the permit. If the Ordinance Administrator has reason to deny a permit, the Ordinance Administrator shall notify the applicant of the nonconformity that would cause a denial and give the applicant 10 business days to cure the nonconformity. If the applicant fails to cure the nonconformity within 10 business days, the Ordinance Administrator shall deny the permit, and such denial shall be made in writing and shall be accompanied by the reasons stating why the permit was denied.

C. Level III permits.

- (1) Level III permit requirements apply to the following towers or tower activities:
  - (a) New towers which are 300 feet or more in height (Category 4).
- (2) Towers permitted under Level III requirements shall comply with the standards contained in § 81-5. In order to obtain a Level III permit, the applicant shall submit the following items to the Ordinance Administrator:
  - (a) Application.
    - [1] An application form. (See Appendix 3.<sup>EN(4)</sup>)
    - [2] A permit fee as set forth by the Henderson County Board of Commissioners on a fee schedule.
    - [3] A tower profile, with dimensions, which shows the proposed tower, the foundation, accessory structures and antennas.
    - [4] A structural engineering certification. Such certification must be signed and sealed by an active, registered, North Carolina professional engineer, certifying the structural integrity of the tower and the tower base.
    - [5] A site plan. Such plan shall be prepared by an active North Carolina registered land surveyor, registered professional engineer or registered landscape architect and shall contain the following information:
      - [a] The names, addresses and telephone numbers of the applicant and the property owner.
      - [b] The plan scale, a North arrow and a vicinity map.
      - [c] Tax parcel identification number for any parcel of land containing the tower site and the tower's latitude and longitude coordinates.
      - [d] The name, address, signature and seal of the person who prepared the site plan.
      - [e] The surveyed boundary lines of any parcel or portion thereof that will

contain the proposed tower. Such boundary lines shall be surveyed by an active North Carolina registered land surveyor.

- [f] The general location of boundary lines of any parcel or portion thereof within a radius from the tower base equal to the proposed tower height.
  - [g] The names and tax parcel identification numbers of all owners of property immediately adjacent to any parcel containing the tower site.
  - [h] All identifiable buildings and other structures (including existing towers), roads and perennial streams located on the parcel containing the tower site and within a radius from the tower base equal to the tower height.
  - [i] The tower base and the foundations for all guyed line anchors and support structures, all proposed buildings, accessory structures and any other proposed improvements, including roads and utilities serving the proposed site.
  - [j] The ground elevation of the base of the proposed tower to the nearest foot.
- [6] Statement regarding accommodation of additional user. The applicant shall submit a document signed and sealed by an active, registered, North Carolina professional engineer which indicates that the proposed tower will accommodate at least one additional user.
- [7] Statement regarding collocation. The applicant shall submit a written statement which indicates that he is willing to allow future collocations and will make space available at fair market value.
- [8] Evidence of mailing of notices of intent. The applicant must submit documentation which shows that the applicant has sent required notices of intent to file an application for a communications tower permit to all owners of property immediately adjacent to the parcel containing the tower site as well as to all owners of property within a radius measured from the tower base equal to twice the tower height. Such notice of intent shall include the following: a vicinity map showing the proposed tower location; a sketch of the tower with dimensions which indicates the proposed tower type and height; and a general statement from the Ordinance Administrator outlining the procedure by which the proposed tower may be permitted. (See Appendix 4<sup>EN(5)</sup> for sample.) Such notices shall be mailed no fewer than 10 days and no more than 30 days prior to the date on which an application for a tower permit is filed.
- [9] Evidence of lack of alternative antenna sites. The applicant must provide written documentation which shows that a reasonable effort has been made to collocate a proposed antenna for a communications tower on an existing tower or alternative structure and that there are no feasible alternatives to constructing the



proposed tower because the owner of an existing tower or alternative structure which could be used for an antenna is unwilling to allow the collocation or because no tower or structure exists which: could provide coverage to the proposed service area; or is structurally capable of supporting the intended equipment; or is the proper height; or would not cause frequency interference.

[10] Easement acquisition documents. Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant. If such application is subsequently approved, the permit will be conditioned on the easement documents being recorded in the Henderson County Register of Deeds Office. The applicant must submit copies of the recorded easements to the Ordinance Administrator. Failure to secure and record the easements will constitute noncompliance and will be grounds for revocation of the permit as provided in § 81-11.

[11] Evidence of compliance with federal and state regulations. The applicant shall be required to provide documentation satisfactory to the Ordinance Administrator of compliance with all applicable federal and state laws and regulations.

[12] List of adjacent property owners. A list of the names, addresses and tax parcel identification numbers of all current owners of all property immediately adjacent to the parcel containing the tower site (as shown on County tax records).

(3) Procedure for review.

(a) Review and approval for Level III permit applications shall be by the Henderson County Board of Commissioners sitting in a quasi-judicial capacity. A complete application for a tower permit must be submitted to the Ordinance Administrator at least 30 days prior to a regularly scheduled meeting of the Board of Commissioners. The Ordinance Administrator shall prepare an item requesting that the Board of Commissioners set a quasi-judicial public hearing on the application and shall forward the item to the County Manager by the agenda deadline for the first regularly scheduled meeting of the Board of Commissioners after a completed application has been submitted. The Board of Commissioners shall schedule the public hearing for a regular evening meeting on a date which allows sufficient time for notice of the hearing to be mailed to owners of adjacent property and to be published in the newspaper, as outlined below. Notice of a quasi-judicial public hearing on an application for a proposed tower shall comply with the provisions of N.C.G.S. 153A-323 and 153A-343, as amended, and as follows:

[1] Newspaper notice. The Ordinance Administrator shall cause a notice of the public hearing to be published as a legal advertisement in a newspaper of

general circulation in Henderson County once a week for two successive weeks, the first publication of which shall not appear fewer than 10 days nor more than 25 days prior to the date set for the public hearing. The notice shall include the time, place and date of the hearing as well as information about the proposed tower, including its type, height and location.

- [2] Mailed notice. The Ordinance Administrator shall cause notice of the public hearing to be sent by certified mail to the owners of all parcels of land immediately adjacent to the parcel(s) of land containing the proposed tower site (as shown on the county tax maps) at the last address listed for such owners as shown on the county tax records. Such notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person(s) mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.
  - [3] Posted notice. A sign advertising the public hearing shall be posted by the Ordinance Administrator in a prominent location on or near the parcel(s) containing the proposed tower site. Such sign(s) shall be posted at least 10 days prior to the public hearing date.
- (b) Public hearing. The public hearing before the Board of Commissioners shall be held pursuant to the Board's rules of procedure for quasi-judicial proceedings.
- (c) Approval/denial of application.
- [1] If a proposed communications tower meets the requirements of this chapter, the Board of Commissioners shall approve the application for the tower permit. The Board of Commissioners may deny an application for a tower if it finds misrepresentation or inaccuracies in the application or a failure to conform to this chapter.
  - [2] The Board of Commissioners shall have 45 days within which to issue its written decision to approve, approve with conditions or deny and such decision shall conform to the Board's rules of procedure for quasi-judicial proceedings. The Board of Commissioners shall send a written copy of its decision to the applicant, the Ordinance Administrator and to other interested parties.
- (d) Issuance of permit. If the Board of Commissioners approves an application for a Level III permit, the Ordinance Administrator shall, on behalf of the Board of Commissioners, issue the permit for the proposed tower.

**§ 81-7. Discontinued use.**

Notice shall be provided to the Ordinance Administrator when the use of a communications

tower is discontinued. If the use of a communications tower has been discontinued for a continuous period of 90 days, then the tower owner/operator or the tower site owner shall remove the tower within 90 days. The tower owner/operator and the tower site owner shall be jointly and severally responsible for such removal.

**§ 81-8. Continued compliance required.**

All permits for the construction of communications towers shall be issued upon a presumption that the application and documents submitted do not contain any misrepresentations or inaccuracies and that the tower will conform to the plans which are submitted as the basis for the permit. Any misrepresentation or inaccuracy in the application or documents submitted or failure to conform the tower to the plans submitted shall constitute a violation of this chapter. Further, once constructed, the tower must continue to be at all times maintained in compliance with the provisions of this chapter; failure to do so shall also constitute a violation of this chapter. Any violation shall subject the tower owner/operator and the tower site owner to revocation pursuant to § 81-11 and penalties pursuant to § 81-9.

**§ 81-9. Violations and penalties.**

The construction of a communications tower, collocation of an antenna on an existing tower, location of an antenna on an alternative structure or the replacement of an existing tower in violation of this chapter, or failure to comply with any of the requirements of this chapter or with any permit issued pursuant to this chapter subject the applicant, the tower owner/operator and/or the owner of the tower site to revocation of the permit (See § 81-11.) and the penalties and enforcement provisions pursuant to N.C.G.S. 153A-123, including, but not limited to, the following:

- A. Equitable remedies. This chapter may be enforced by equitable remedies, and any unlawful condition existing in violation of this chapter may be enforced by injunction and order of abatement in accordance with N.C.G.S. 153A-123.
  - (1) Injunction. Where necessary to effectuate compliance with this chapter, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances may institute an action in a court of competent jurisdiction seeking an injunction against the further violation of this chapter. Such action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions herein.
  - (2) Order of abatement. Where necessary to abate a condition existing upon land in violation of this chapter or a use made of land in violation of this chapter, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances may institute an action in a court of competent

- jurisdiction seeking an order of abatement of the use or condition of land in violation of this chapter. Such action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the use or condition of land in violation of this chapter.
- (3) Other equitable remedies. This chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.
- B. Civil penalties. Any individual who is found in violation of this chapter may be subject to a civil penalty of \$50. Each day's violation shall be treated as a separate offense.
- (1) Compliance order.
- (a) Upon making a determination that a person is in violation of this chapter, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances shall issue a compliance order to the person in violation of this chapter. The compliance order shall notify the violator of the violation in writing. Such order shall identify the circumstances giving rise to the violation, including the times, dates and places of the violation. Such notification shall further identify the action which is necessary to comply with this chapter. Such notification shall state that if the violator does not comply within a reasonable time, not to exceed 15 days, the individual will be subjected to a civil penalty. If circumstances exist such that the violator cannot come into compliance within 15 days, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances may grant an extension of time commensurate with the magnitude of the violation. The compliance order shall further state that failure to comply with the terms of the compliance order will subject the violator to a civil penalty and shall further state the amount of said civil penalty.
- (b) Failure to comply with the terms of a compliance order issued by the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances within the time stated in the order shall subject the violator to a civil penalty of \$50. Each day that the violation continues shall be considered a separate offense, and the violator may be subject to an additional civil penalty for each such separate offense.
- (2) Civil action. When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted against an individual for the collection of all accrued penalties by the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances.
- C. Criminal penalties. Unless otherwise provided by this chapter or other applicable law, violation of this chapter shall constitute a Class 3 misdemeanor punishable by a fine not to

exceed \$500. Each day's violation shall be treated as a separate offense.

- (1) **Warning ticket.** Upon the initial violation of a particular provision of this chapter, an individual may be issued a warning ticket. Such warning ticket shall identify the particular practice which is in violation of this chapter and shall state the time, date and place of the violation. Such warning ticket shall further state that if the individual commits further similar violations within the six months following the date of the warning ticket, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances may cause a warrant to be issued for the individual's arrest.
- (2) **Warrant.** If an individual violates this chapter within the six months following the issuance of a warning ticket in a manner that is similar to the violation specified in the warning ticket, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances may cause a warrant to be issued for the arrest of the individual.
- (3) **Notwithstanding any other provisions of this chapter, the Ordinance Administrator or such other official charged with the responsibility of enforcing Henderson County Ordinances may cause a warrant to be issued without having first issued a warning ticket where he/she deems it necessary to effectively enforce the terms of this chapter.**

**§ 81-10. Variances.**

- A. Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Board of Commissioners may authorize a variance, if such variance can be made without compromising the intent of this chapter. Notwithstanding the foregoing, no variance may be issued allowing the modification of any height restriction or limitation contained in this chapter. Anyone desiring a variance from the terms of this chapter shall make application, in writing, justifying the request. The Ordinance Administrator shall prepare an item requesting that the Board of Commissioners set a quasi-judicial public hearing on the application for variance and shall forward the item to the County Manager by the agenda deadline for the first regularly scheduled meeting of the Board of Commissioners after the application has been submitted. The Board of Commissioners shall schedule the public hearing for a regular evening meeting on a date which allows sufficient time for notice of the hearing to be mailed to owners of adjacent property and to be published in the newspaper, as outlined in § 81-6C. Notice of a quasi-judicial public hearing on an application for a proposed tower shall comply with the provisions of N.C.G.S. 153A-323 and 153A-343, as amended. (See § 81-6C.) The Board of Commissioners shall consider the public health, safety and welfare when ruling on applications for variance. Any grant of a variance pursuant to this § 81-10 must be based upon specific findings of the fact made by the Board that support the following conclusions:

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.
  - (2) The variance applied for is in harmony with the general purpose and intent of this chapter and preserves its spirit.
  - (3) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.
- B. Any variance authorized by the Board of Commissioners is required to be entered in the minutes of the meeting of the Board of Commissioners and the reasoning on which the departure was justified set forth. In addition, the grant of the variance shall be made in writing and delivered to the applicant.

**§ 81-11. Revocation of permit.**

- A. Revocation by Ordinance Administrator. The Ordinance Administrator shall revoke any permit issued by the Ordinance Administrator pursuant to this chapter for any violation of this chapter upon the Ordinance Administrator having knowledge of such violation; provided, however, that the Ordinance Administrator shall notify the tower owner/operator and tower site owner of the violation that may cause the permit to be revoked and give the tower owner/operator and tower site owner at least 10 business days to cure the violation. If the tower owner/operator and/or the tower site owner fails to cure the violation within the time prescribed, the Ordinance Administrator shall revoke the permit. The revocation of the permit must be made in writing and must be accompanied by the reasons for which the permit was revoked.
- B. Revocation by Board of Commissioners. The Board of Commissioners may revoke any permit issued pursuant to this chapter for any violation of this chapter; provided, however, that prior to the Board of Commissioners consideration of the revocation of the permit, the Ordinance Administrator shall notify the tower owner/operator and tower site owner of the violation that may cause the permit to be revoked and give the tower owner/operator and tower site owner at least 10 business days to cure the violation. If the tower owner/operator and/or the tower site owner fails to cure the violation within the time prescribed, the Ordinance Administrator may prepare an item requesting that the Board of Commissioners set a quasi-judicial public hearing on the revocation of the permit and shall forward the item to the County Manager by the agenda deadline for the first regularly scheduled meeting of the Board of Commissioners after the revocation request has been submitted. The Board of Commissioners shall schedule the public hearing for a regular evening meeting on a date which allows sufficient time for notice of the hearing to be mailed to owners of adjacent property and to be published in the newspaper, as outlined in § 81-6C. Notice of a quasi-judicial public hearing on an application for a proposed tower shall comply with the provisions of N.C.G.S. 153A-323 and 153A-343, as amended. (See § 81-6C.) The revocation

of the permit must be made in writing and must be accompanied by the reasons for which the permit was revoked. The request for revocation of the permit submitted to the Board of Commissioners may be accompanied by an application for variance related to the violation and the same may be considered by the Board of Commissioners as outlined in § 81-10.

**§ 81-12. Appeals.**

- A. Decision of the Ordinance Administrator. The denial or the revocation of a permit by the Ordinance Administrator or the imposition of any conditions to such permit by the Ordinance Administrator may be appealed to the Board of County Commissioners by giving written notice within 15 days of notification to the applicant of the Ordinance Administrator's decision. Further appeal shall be made pursuant to Subsection B as hereinbelow set forth.
- B. Decision of the Board of Commissioners. The denial or the revocation of a permit by the Board of Commissioners or the imposition of any conditions to such permit by the Board of Commissioners may be appealed to the Superior Court of Henderson County in the nature of certiorari. A petition for writ of certiorari in the Superior Court must be filed with the Clerk of Superior Court within 30 days after the decision of the Board of County Commissioners is served upon the applicant. Unless otherwise ordered by a court of competent jurisdiction, this chapter may be enforced pursuant to § 81-9 during the pendency of any appeal under this subsection.

**§ 81-13. Permit fees and expenses.**

The Board of Commissioners may set fees for any and all permits granted under the terms of this chapter and for processing applications for variances. All reasonable and necessary expenses associated with the processing, issuance or denial of any application or variance, including, but not limited to, advertising fees, postage, travel, engineering studies and technical consultations, may be recovered from the applicant.

**§ 81-14. Headings and captions.**

Section and subsection headings and subheadings are inserted by convenience only and shall not affect any interpretation of this chapter.

**Appendix 1. Application for Level I Permits.**

**Appendix 1  
Application for Level I Permit  
HENDERSON COUNTY**

APPLICATION FOR A LEVEL I PERMIT

Application Date \_\_\_\_\_ Application No. \_\_\_\_\_

Location of Tower \_\_\_\_\_

Property Owner's Mailing Address \_\_\_\_\_

\_\_\_\_\_ Ph. \_\_\_\_\_ Fax \_\_\_\_\_

PIN \_\_\_\_\_

Name and Address of applicant (if different) \_\_\_\_\_

\_\_\_\_\_ Ph. \_\_\_\_\_ Fax \_\_\_\_\_

Proposed Use of Tower \_\_\_\_\_

Proposed Operator(s) \_\_\_\_\_

Zoning District \_\_\_\_\_ Lot Size \_\_\_\_\_ ac. Tower Type \_\_\_\_\_

Category \_\_\_\_\_ Tower Height \_\_\_\_\_ New or Replacement \_\_\_\_\_

Checklist of Required Documents:

\_\_\_\_\_ Sketch Plan

\_\_\_\_\_ Tower Profile (Optional)

\_\_\_\_\_ Structural Engineering Certification

\_\_\_\_\_ FOR COUNTY USE ONLY \_\_\_\_\_

Completed application received on \_\_\_\_\_ by \_\_\_\_\_ Fee Paid \$ \_\_\_\_\_

Reviewed on \_\_\_\_\_ by \_\_\_\_\_ Comments \_\_\_\_\_

**Appendix 2. Application for Level II Permits**

**Appendix 2  
Application for Level II Permit**

HENDERSON COUNTY  
APPLICATION FOR A LEVEL II PERMIT



Application Date \_\_\_\_\_ Application No. \_\_\_\_\_

Location of Tower \_\_\_\_\_

Property Owner's Mailing Address \_\_\_\_\_

\_\_\_\_\_ Ph. \_\_\_\_\_ Fax \_\_\_\_\_

PIN \_\_\_\_\_

Name and Address of applicant (if different) \_\_\_\_\_

\_\_\_\_\_ Ph. \_\_\_\_\_ Fax \_\_\_\_\_

Proposed Use of Tower \_\_\_\_\_

Proposed Operator(s) \_\_\_\_\_

Zoning District \_\_\_\_\_ Lot Size \_\_\_\_\_ ac. Tower Type \_\_\_\_\_

Category \_\_\_\_\_ Tower Height \_\_\_\_\_ New or Replacement \_\_\_\_\_

Distance (to nearest 1/10 mile) to nearest existing tower (over 50 feet)

\_\_\_\_\_

Operator of nearest tower \_\_\_\_\_

Checklist of Required Documents:

\_\_\_\_\_ Site Plan

\_\_\_\_\_ Tower Profile

\_\_\_\_\_ Structural Engineering Certification

\_\_\_\_\_ Statement of Accommodation of Additional User

\_\_\_\_\_ Statement Regarding Collocation

\_\_\_\_\_ Evidence of Notices of Intent to Adjacent/Nearby Owners

\_\_\_\_\_ Evidence of Lack of Alternative Antenna Sites

\_\_\_\_\_ Easement Documents (if necessary)

\_\_\_\_\_ FOR COUNTY USE ONLY \_\_\_\_\_

Completed application received on \_\_\_\_\_ by \_\_\_\_\_ Fee Paid \$ \_\_\_\_\_

Reviewed on \_\_\_\_\_ by \_\_\_\_\_ Comments \_\_\_\_\_

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**Appendix 3. Application for Level III Permits.**

**Appendix 3  
Application for Level III Permit**

**HENDERSON COUNTY  
APPLICATION FOR A LEVEL III PERMIT**

Application Date \_\_\_\_\_ Application No. \_\_\_\_\_

Location of Tower \_\_\_\_\_

Property Owner's Mailing Address \_\_\_\_\_

\_\_\_\_\_ Ph. \_\_\_\_\_ Fax \_\_\_\_\_

PIN \_\_\_\_\_

Name and Address of applicant (if different) \_\_\_\_\_

\_\_\_\_\_ Ph. \_\_\_\_\_ Fax \_\_\_\_\_

Proposed Use of Tower \_\_\_\_\_

Proposed Operator(s) \_\_\_\_\_

Zoning District \_\_\_\_\_ Lot Size \_\_\_\_\_ ac. Tower Type \_\_\_\_\_

Category \_\_\_\_\_ Tower Height \_\_\_\_\_ New or Replacement \_\_\_\_\_

Distance (to nearest 1/10 mile) to nearest existing tower (over 50 feet)  
\_\_\_\_\_

Operator of nearest tower \_\_\_\_\_

**Checklist of Required Documents:**

- \_\_\_\_\_ Site Plan
- \_\_\_\_\_ Tower Profile
- \_\_\_\_\_ Structural Engineering Certification
- \_\_\_\_\_ Statement of Accommodation of Additional User
- \_\_\_\_\_ Statement Regarding Collocation

\_\_\_\_\_ Evidence of Notices of Intent to Adjacent/Nearby Owners

\_\_\_\_\_ Evidence of Lack of Alternative Antenna Sites

\_\_\_\_\_ Easement Documents (if necessary)

\_\_\_\_\_ List of Adjacent Property Owners

\_\_\_\_\_ FOR COUNTY USE ONLY \_\_\_\_\_

Completed application received on \_\_\_\_\_ by \_\_\_\_\_ Fee Paid \$ \_\_\_\_\_

Reviewed on \_\_\_\_\_ by \_\_\_\_\_ Comments \_\_\_\_\_

\_\_\_\_\_

**Appendix 4. Statement Regarding Tower Approval Process.**

**Appendix 4  
Statement Regarding Tower Approval Process**

(Sample Letter of Notice of Intent)

**NOTICE OF INTENT TO FILE AN APPLICATION  
FOR A COMMUNICATIONS TOWER PERMIT IN  
HENDERSON COUNTY**

Dear Property Owner:

Pursuant to the requirements in the Henderson County Communications Tower Ordinance, adopted on \_\_\_\_\_, we are obligated to provide formal notice of a pending application for a tower permit to all adjacent owners of property and all owners of property within a stated distance from a proposed qualifying tower site. Your property qualifies for such notification.

\_\_\_\_\_ (tower owner/operator) plans to construct a \_\_\_\_\_ ft. \_\_\_\_\_ (type) tower on property owned by \_\_\_\_\_, as shown on the attached vicinity map and tower sketch. To secure a permit for construction of such tower requires only that the standards stated in the Ordinance be satisfied. Such standards are technical and administrative in nature. We intent to file our permit application with Henderson County on \_\_\_\_\_.

Please note that the County's regulations require only that notice be given before an application can be approved.

Respectfully Submitted,

\_\_\_\_\_  
Applicant's name, address and

phone number

Note: If the proposed tower is 300 feet in height or greater, (Category 4) the last paragraph should state: "Please note that a quasi-judicial hearing will be held by the Board of Commissioners to decide if the permit requirements have been met. Adjacent owners will receive notice of such hearing and notice will be advertised in the newspaper telling of the time and date of the hearing."

## **Endnotes**

### **1 (Popup)**

Editor's Note: Appendix 1 is included at the end of this chapter.

### **2 (Popup)**

Editor's Note: Appendix 2 is included at the end of this chapter.

### **3 (Popup)**

Editor's Note: Appendix 4 is included at the end of this chapter.

### **4 (Popup)**

Editor's Note: Appendix 3 is included at the end of this chapter.

### **5 (Popup)**

Editor's Note: Appendix 4 is included at the end of this chapter.

# Henderson County, NC

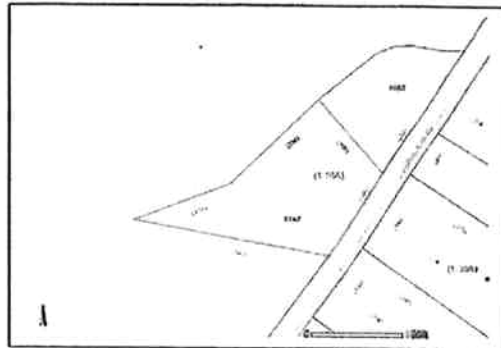
## Planning Department • Zoning Administration

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101 EAST ALLEN STREET • HENDERSONVILLE, NC 28792  
PHONE: (828)-697-4857 • FAX: (828)-697-4533

January 10, 2005

Harold K. Timmons  
Zoning Manager  
Pegasus Tower Company  
P.O. Box 233  
Richlands, Virginia 24641



Re: Application for construction of new 199' cellular tower on Judds Peak Road upon (PID parcel identification number: 00959544874755)

Dear Mr. Timmons,

I have reviewed the above referenced application for construction of a Level II communications tower permit on Judds Peak Road to see if the application was complete. In doing so, I found that the application was indeed missing some required information.

The following items are specific to category 4 communication towers and are either missing entirely or incomplete:

**81-5.A Separation from existing communications towers.**

The application stated that the closes tower is a US Cellular tower 2.04 miles (10,779 feet) away. Refer to Enclosure 1 for a tower that is around 1.0 mile (5,800 feet) away. The tower owner is unknown and the height of the tower is unknown. This should be the tower of reference unless it is below the 150 foot threshold. If it is below the 150 foot threshold, I would like to see a copy of the engineers report that supports the "statement regarding lack of Existing Structures dated December 15, 2004" for the US Cellular site. What was US Cellular tower capacity for providers? You stated that it already has two existing users and the height of the available space further degrades it use.

**81-5.B. Separation from occupied buildings.** New monopole towers shall be separated from occupied buildings by a distance equal to 75% of the height of the proposed tower. Item B on the "statement of Ordinance Compliance" dated December 15, 2004 states that there are no occupied/habitable buildings within 200 or more feet of the tower. Refer to enclosure 2 which shows 2 structures do fall within that designated radius.

**81-5.G. Compliance with federal and state regulations.** The applicant shall be required to provide documentation satisfactory to the Ordinance Administrator of compliance with all applicable federal and state law and regulations. Item G on the "statement of Ordinance Compliance" dated December 15, 2004 states that the studies are complete and can be provided upon request. The county would request a copy of the studies and approvals.

The following items are specific to **81-6.B Level II permits** for communication towers and are either missing entirely or incomplete:

**81.6.B.(2).(a).3 A tower profile, with dimensions, which shows the proposed tower, the foundation, accessory structures and antennas.** The tower elevation provided only shows tower and its dimensions. There are other sheets that show parts detailed, but not as a unit. Sheet C-7 shows elevation but fence hides details of buildings, etc.

**81.6.B.(2).(a).4 A structural engineering certification, signed and sealed by an active, registered, North Carolina professional engineer, certifying the structural integrity of the tower and the tower base.** The application states that one was provided. I could not locate the certification letter.

**81.6.B.(2).(a).5 A site plan.**

[e] The surveyed boundary lines of any parcel or portion thereof that will contain the proposed tower. Such boundary lines **shall** be surveyed by an active North Carolina registered land surveyor. **(not provided)**

[g] The names and tax parcel identification numbers of all owners of property immediately adjacent to any parcel containing the tower site. **(provided, but contain errors)**

[h] All identifiable buildings and other structures (including existing towers), roads and perennial streams located on the parcel containing the tower site and within a radius from the tower base equal to the tower height. **(not provided on site plan)**

**81.6.B.(2).(a).6 Statement regarding accommodation of additional user.** The applicant shall submit a document signed and sealed by an active, registered, North Carolina professional engineer, which indicates that the proposed tower will accommodate at least one additional user. **Drawing shows 5 users and the sheet is sealed but does not provide a statement from engineer supporting types of collocations. (ie, size, weight, etc) (Sheet C-7)**

**81.6.B.(2).(a).8 Evidence of mailing of notices of intent.** The applicant must submit documentation which shows that the applicant has sent required notices of intent to file an application for a communications tower permit to all owners of property immediately adjacent to the parcel containing the tower site, as well as to all owners of property within a radius measured from the tower base equal to twice the tower height. Such notice of intent shall include the following: a vicinity map showing the proposed tower location; a sketch of the tower with dimensions which indicates the proposed tower type and height; and a general statement from the Ordinance Administrator outlining the procedure by which the proposed tower may be permitted. (See Appendix 4EN(3) for sample.) Such notices shall be mailed no fewer than 10 days and no more than 30 days prior to the date on which an application for a tower permit is filed.

**A sketch of the tower with dimensions which indicates the proposed tower type and height was not provided with letter sent. A William R. Wilkes at 160 Broyles Road Hendersonville, NC 28791 was not notified. He is listed as an owner of 00959554275455.**

**81.6.B.(2).(a).9 The applicant Evidence of lack of alternative antenna sites. See 81-5.A above.**

**81.6.B.(2).(a).10 Easement acquisition documents. Where any adjacent property to the tower site alls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant. If such application is subsequently approved, the permit will be conditioned on the easement documents being recorded in the Henderson County Register of Deeds Office. The applicant must submit copies of the recorded easements to the Ordinance Administrator. Failure to secure and record the easements will constitute noncompliance and will be grounds for revocation of the permit as provided in § 81-11. Easement documents received in my office so far declining to sign. Karol Kay Rood of property 00959554164255 has declined in writing to sign the required documents. I have not received any other documents at this time.**

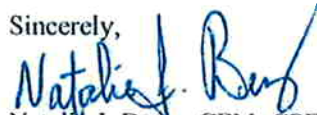
**81.6.B.(2).(a).11 Evidence of compliance with federal and state regulations. The applicant shall be required to provide documentation satisfactory to the Ordinance Administrator of compliance with all applicable federal and state regulations. See 81-5.G. above.**

**81-6.B.(3) Procedure for review. If an application for a Level II permit meets the requirements of this chapter, the Ordinance Administrator shall issue a permit for the tower. The Ordinance Administrator shall have 15 business days from the date a complete application is filed to issue or deny the permit.**

Since the application was incomplete, I cannot approve or deny the tower. I have enclosed your check number 8530 in the amount of \$300.00 with this letter. Feel free to resubmit the application for review once the items above are addressed. I do know of a tower being proposed less than 1000 feet away from this proposed tower. The City of Saluda is in the process of proposing a tower on parcel 00959565264055. Once the complete application has been made, whichever is first in doing so will block the other applicant due to falling with 1/2 mile radius.

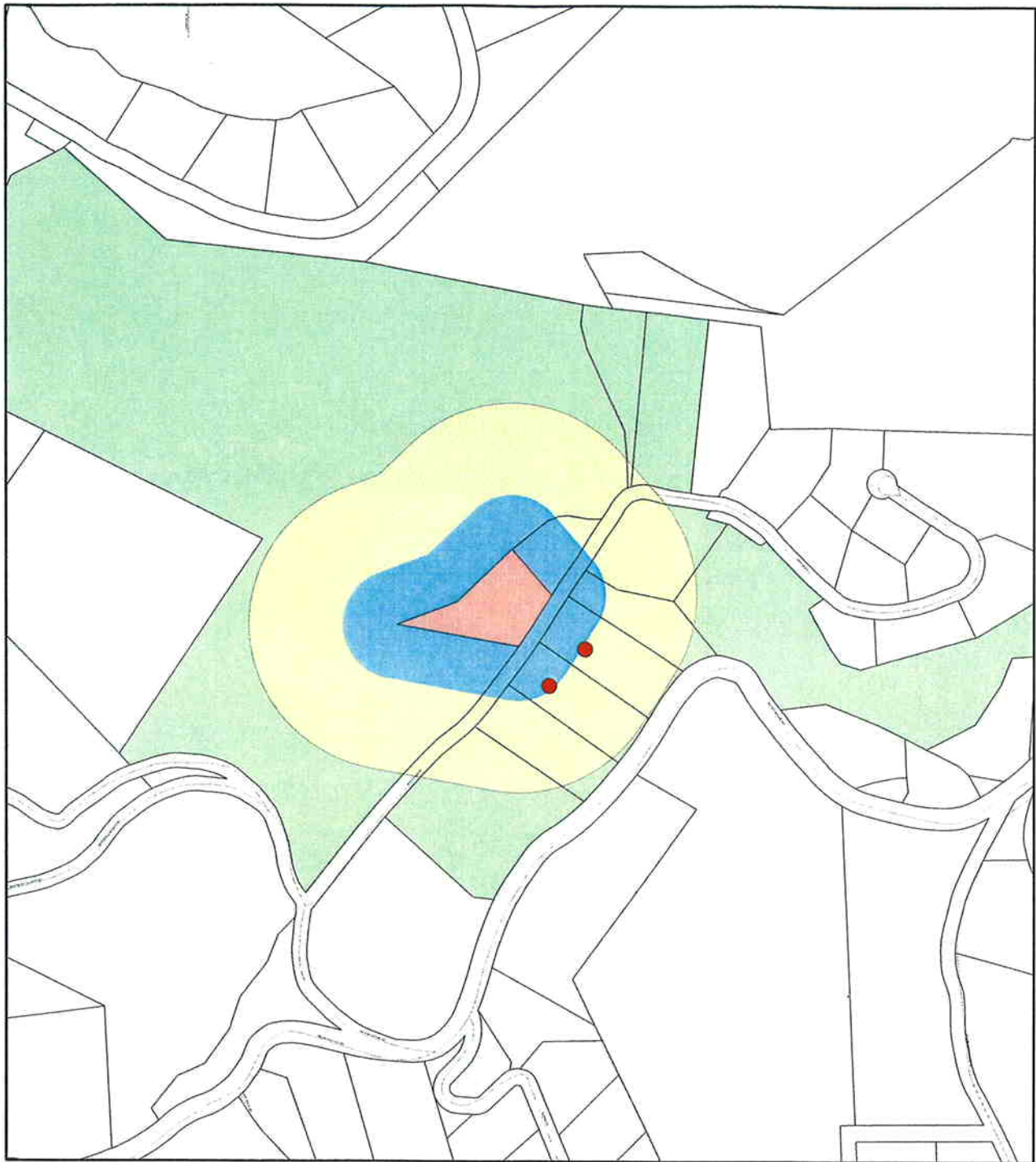
If you have any questions please do not hesitate to call me at 828-697-4857, Monday through Friday, 8:00 a.m. to 4:30 p.m.

Sincerely,








Natalie J. Berry, CFM, CPESC  
Zoning Administrator  
Henderson County Planning Department

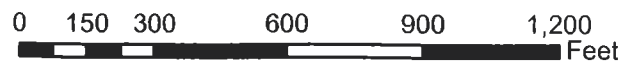
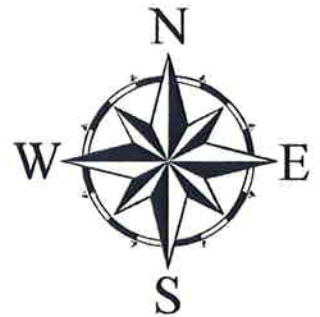




**Legend**

-  parcels
-  Tower\_Parcel
-  400' Buffer
-  Parcels\_within\_400'
-  Structures\_within\_149.25'

**PIN 00-9595-44-8747-55**



Karol Kay Rood, Trustee & Karol Kay Rood NC PER  
RES TRUST  
12192 Mandarin Road  
Jacksonville, FL 32223

December 1, 2004



Natalie Berry  
Henderson County Zoning Administrator  
101 East Allen Street  
Hendersonville, NC 28792

Subject: Deed of Easement

Dear Ms. Berry:

We have been approached by Pegasus Tower Company LTD regarding a Deed of Easement. The Easement is required in relation to a proposed communication tower on the adjacent property owned by William R. Wilkes (located in Henderson County, North Carolina, known as the Wilkes Site) and Chapter 81 of the Henderson County Zoning Ordinance. As the owner of property documented as Deed Book 882, Page 358, Tax ID # 00959544874755 in Henderson County, North Carolina, this letter is to confirm that we, as the Landowners, are currently in the process of negotiating this Deed of Easement with Pegasus Tower Company, LTD.

Sincerely,

Landowners of Record:

Karol Kay Rood  
Date: 12/13/04

\_\_\_\_\_  
Date: \_\_\_\_\_

I will not agree to this Easement  
K.K.R.

**HENDERSON COUNTY**  
**Planning Department Zoning Administration**

---

101 East Allen Street • Hendersonville, NC 28792  
Phone 828-697-4857 • Fax 828-697-4533

Via Certified Mail

March 23, 2005

**NOTICE OF PUBLIC HEARING**  
**ON APPLICATION #CTV-05-1**  
**FOR A VARIANCE FROM THE COMMUNICATIONS**  
**TOWER ORDINANCE OF HENDERSON COUNTY, NC**

Dear Property Owner:

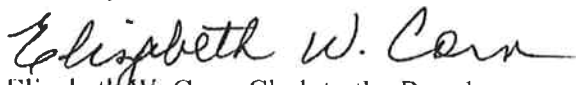
I am writing to notify you that the Henderson County Board of Commissioners has scheduled a public hearing on an Application (#CTV-05-01) by Mr. Harold K. Timmons, Agent for Pegasus Tower Company ("The applicant"), which requests a wavier from the required submittal of Easement Acquisition Documents for a 199-foot communications tower proposed for property located on Judds Peak Road. Section 81-6 B(2)(a)[10] of the Communications Tower Ordinance requires: "Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant." The tower is proposed for a tract of land (parcel identification number of 00-9595-44-8747-55) owned by Mr. William R. Wilkes. The subject property contains approximately 1.16 acres. (See enclosed site plan)

The public hearing will be held on Monday, April 4, 2005, at 7:00 P.M., in the Board of Commissioners meeting room, located at 100 N. King Street, in Henderson County, NC. The hearing will be conducted as a quasi-judicial proceeding. Parties demonstrating standing regarding the application may participate in the hearing. Information concerning the rules of procedure for the hearing is enclosed for reference. All persons are strongly encouraged not to contact members of the Board of Commissioners prior to the hearing due to its quasi-judicial nature.

Information about the variance application may be obtained at the Henderson County Planning Department, 101 E. Allen Street, Hendersonville, N.C., between the hours of 8:00 AM and 4:30 PM, Monday through Friday, or by calling the planning department at (828) 697-4819 [TDD (828) 697-4580].

Please direct questions regarding the variance application and public hearing to Henderson County Zoning Administrator Natalie J. Berry at (828) 697-4857.

Sincerely,



Elizabeth W. Corn, Clerk to the Board  
Henderson County Board of Commissioners

EC/njb

**HENDERSON COUNTY**  
**Planning Department Zoning Administration**

---

101 East Allen Street • Hendersonville, NC 28792  
Phone 828-697-4857 • Fax 828-697-4533

Via Certified Mail

March 23, 2005

Mr. Harold K. Timmons  
Zoning Coordinator  
Pegasus Tower Company  
P.O. Box 233  
Richlands, Virginia 24641

**NOTICE OF PUBLIC HEARING**  
**ON APPLICATION #CTV-05-1**  
**FOR A VARIANCE FROM THE COMMUNICATIONS**  
**TOWER ORDINANCE OF HENDERSON COUNTY, NC**

Dear Mr. Timmons:

Notice is hereby provided, as required by the Henderson County Board of Commissioners Rules of Procedure for Quasi-Judicial Proceedings, that the Henderson County Board of Commissioners has scheduled a public hearing on the variance application (#CTV-05-01) you submitted under the Communications Tower Ordinance of Henderson County, North Carolina on behalf of Pegasus Tower Company

Variance application #CTV-05-01, which requests a wavier from the required submittal of Easement Acquisition Documents for a 199-foot communications tower proposed for property located on Judds Peak Road. Section 81-6 B(2)(a)[10] of the Communications Tower Ordinance requires: "Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant." The tower is proposed for a tract of land (parcel identification number of 00-9595-44-8747-55) owned by Mr. William R. Wilkes. The subject property contains approximately 1.16 acres.

The public hearing will be held on Monday, April 4, 2005, at 7:00 P.M., in the Board of Commissioners meeting room, located at 100 N. King Street, in Henderson County, NC. The hearing will be conducted as a quasi-judicial proceeding. Parties demonstrating standing regarding the application may participate in the hearing. Information concerning the rules of procedure for the hearing is enclosed for reference. All persons are strongly encouraged not to contact members of the Board of Commissioners prior to the hearing due to its quasi-judicial nature.

Notice to Applicant of Public Hearing  
Application #CTV-05-01

March 24, 2004  
Page 2 of 2

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Please direct questions regarding the public hearing to Henderson County Zoning Administrator Natalie J. Berry at (828) 697-4857.

Sincerely,



Elizabeth W. Corn, Clerk to the Board  
Henderson County Board of Commissioners

EC/njb

cc: William R. Wilkes

**NOTICE OF PUBLIC HEARING**

**ON APPLICATION #CTV-05-01 FOR VARIANCE FROM THE COMMUNICATIONS TOWER ORDINANCE OF NORTH CAROLINA**

Notice is hereby given, as required by Section 81-10 of the Communications Tower Ordinance of Henderson County, North Carolina, that the Henderson County Board of Commissioners has scheduled a public hearing on variance application #CTV-05-01. Mr. Harold K. Timmons, on behalf of Pegasus Tower Company, submitted variance application #CTV-05-01, which requests a waiver from the required submittal of

**Legals**

Easement Acquisition Documents for a 199-foot communications tower proposed for property on Judde Peak Road, Section 81-6.B(2)(a)[10] of the Communications Tower Ordinance requires: "Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant." The tower is proposed for a tract of land (parcel identification number of 00-9595-44-8747-55) owned by Mr. William R. Wilkes. The subject property contains approximately 1.16 acres.

The hearing will be held on Monday, April 4, 2005, at 7:00 PM, in the Board of Commissioners meeting room, located at 100 N. King Street, in Henderson County, NC. The hearing will be conducted as a quasi-judicial proceeding. Parties demonstrating standing regarding the application may participate in the hearing. Information concerning the rules of procedure for the hearing may be obtained from the Henderson County Planning Department (see contact information below).

Information about the variance application may be obtained at the Henderson County Planning Department, 101 East Allen Street, Hendersonville, NC, between 8:00 A.M. and 4:30 P.M., Monday through Friday, or by calling the Planning Department at (828) 697-4819 [TDD (828) 697-4580].

Elizabeth W. Corn, Clerk to the Board, Henderson County Board of Commissioners

(04560773) 3/24, 31

**NOTICE OF PUBLIC HEARING**

**ON APPLICATION #CTV-05-01 FOR VARIANCE FROM THE COMMUNICATIONS TOWER ORDINANCE OF NORTH CAROLINA**

Notice is hereby given, as required by Section 81-10 of the Communications Tower Ordinance of Henderson County, North Carolina, that the Henderson County Board of Commissioners has scheduled a public hearing on variance application #CTV-05-01. Mr. Harold K. Timmons, on behalf of Pegasus Tower Company, submitted variance application #CTV-05-01, which requests a waiver from the required submittal of Easement Acquisition Documents for a 199-foot communications tower proposed for property on Judde Peak Road, Section 81-6.B(2)(a)[10] of the Communications Tower Ordinance requires: "Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant."

The tower is proposed for a tract of land (parcel identification number of 00-9595-44-8747-55) owned by Mr. William R. Wilkes. The subject property contains approximately 1.16 acres.

The hearing will be held on Monday, April 4, 2005, at 7:00 PM, in the Board of Commissioners meeting room, located at 100 N. King Street, in Henderson County, NC. The hearing will be conducted as a quasi-judicial proceeding. Parties demonstrating standing regarding the application may participate in the hearing. Information concerning the rules of procedure for the hearing may be obtained from the Henderson County Planning Department (see contact information below).

Information about the variance application may be obtained at the Henderson County Planning Department, 101 East Allen Street, Hendersonville, NC, between 8:00 A.M. and 4:30 P.M., Monday through Friday, or by calling the Planning Department at (828) 697-4819 [TDD (828) 697-4580].

Elizabeth W. Corn, Clerk to the Board, Henderson County Board of Commissioners

(04560773) 3/24, 31



**Attachment 9**



**Legend**

-  Tower\_Parcel
-  parcels
-  City of Saluda Annexed Parcel



**PIN 00-9595-65-2640-55**

