

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

O-15-02R

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 23rd day of May 2002:

| Present: | Vote: |
|------------------------|-------|
| Julian T. Lipscomb | Aye |
| Rebecca M. Ringley | Aye |
| James H. Burrell | Aye |
| Dean E. Raynes | Aye |
| W. R. "Ray" Davis, Jr. | Aye |

Motion was made by Mrs. Ringley, which carried 5:0, to adopt the following ordinance:

**AN ORDINANCE TO AMEND SECTION 98-745 OF
CHAPTER 98, ZONING, NEW KENT COUNTY CODE**

WHEREAS, a use permit application was submitted to New Kent County to authorize use of the "FT Worth" tower which is installed inside an existing electrical transmission tower; and

WHEREAS, such a request clearly complies with the spirit of the County's Comprehensive Plan with respect to seeking opportunities to locate on existing structures; and

WHEREAS, the New Kent County Zoning Ordinance currently precludes certain co-locations otherwise meeting the spirit and intent of the Comprehensive Plan because they cannot be engineered to accommodate four users thus giving rise to this application; and

WHEREAS, this application was referred to and considered by the New Kent County Planning Commission; and

WHEREAS, after conducting a duly advertised public hearing, the Planning Commission voted to recommend approval of the application; and

WHEREAS, it appears to the Board to be good public policy not only to permit such co-locations but to encourage them by reducing the time, effort, and cost burden upon applicants proposing co-locations using this technique or similar methods; and

WHEREAS, the Board believes that allowing the Zoning Administrator to act administratively within narrow guidelines will provide adequate protection to the property values, health and general welfare of the citizens of New Kent County while encouraging the kind of co-location and camouflaging envisioned by the Comprehensive Plan;

WHEREAS, this application has been advertised for public hearing before the Board in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, approval of this application would address, protect, and promote public convenience, necessity, general welfare and good zoning practices in the County,

NOW THEREFORE BE IT ORDAINED this, the 23rd day of May 2002, by the New Kent County Board of Supervisors that Section 98-745 of Chapter 98, Zoning, of the New Kent County Code be, and it is hereby, amended and reordained to add a new section as follows:

Sec. 98-743. Authority to issue conditional use permits; procedure

Except as is set forth in Section 98-745 (b)(17.1) all conditional use permits shall be authorized by the Board of Supervisors provided that:

* * *

Sec. 98-745. Specific use conditions.

* * *

- (b) The following conditional uses in addition to any other conditions or restrictions that may be imposed shall comply with the specific requirements set forth in this section. In addition to the following

specific conditions, the planning commission may recommend, and the board of supervisors may adopt, any additional conditions *or modifications to the enumerated conditions* it deems necessary to ensure the compatibility of conditional uses with surrounding uses, promote the county comprehensive plan, and protect the health, safety and general welfare of the public.

* * *

- (16) Radio, television or communication stations and/or towers which exceed 50 feet in height in the conservation and on agricultural zoning districts.

* * *

- g. An engineering report, certifying that the proposed tower is compatible for a minimum of four users, must be submitted by the applicant. ***This requirement shall not apply to facilities that are constructed to be camouflaged and which in fact harmonize with the existing landscape, structures, and views.***

* * *

- (17) Radio, television or communication stations and/or towers which exceed 50 feet in height on property zoned B-1, B-2, B-3, M-1, and M-2.

* * *

- h. An engineering report, certifying that the proposed tower is compatible for a minimum of four users, must be submitted by the applicant. ***This requirement shall not apply to facilities that are constructed to be camouflaged and which in fact harmonize with the existing landscape, structures, and views.***

* * *

- (17.1) Telecommunications towers or antennae attached to or erected within existing structures or camouflaged towers that exceed fifty (50) feet.*

a. *Subject to the conditions in paragraph 98-745(b)17.1(b), the following telecommunications towers or antenna ("Facilities") shall be exempt from the provisions of sections 98-745(b)(16) and 98-745(b)(17):*

(1) *facilities that are attached to or within an existing structure provided that (a) the net effect of the facility shall not increase the height of the existing structure by more than 12.5% or exceed 199', whichever is the lesser height; (b) the facility shall not overhang the outer dimension of the existing structure by more than 7.5%; and (c) the net effect of the facility will not cause the host structure to become non-compliant in any material respect with the New Kent County Code or the terms of any condition specifically or generally attached to the host structure through prior legislative or administrative action.*

b. *Conditions*

(1) *A site plan of the proposed facility must be submitted to and approved by the zoning administrator. As part of the site plan submittal, detailed information regarding the proposed facility's location, latitude and longitude, and service area must be included.*

(2) *A fence at least six feet (6') in height shall be erected completely around the area containing the facility, any shed, shelter, platform or equipment appurtenant to the facility. Security lighting shall be provided within the fenced enclosure. A buffer of evergreen screening (trees or hedging) shall be provided around the entire fenced area.*

(3) *All newly installed utilities leading to the site shall be placed underground.*

(4) *The facility shall not interfere with the radio, television or communications reception of nearby property owners in residence at the time of construction. The owner shall successfully eliminate any such interference within thirty (30) calendar days of learning that such interference exists.*

(5) *The facility and all auxiliary structures shall meet all safety requirements and all applicable building codes.*

- (6) *Certified evidence of the facility's compliance with all National Environmental Protection Act (NEPA), Federal Aviation Administration (FAA) and Federal Communication Commission (FCC) requirements shall be submitted with the building permit application.*
- (7) *Certified evidence that the facility will not exceed applicable health standards established by the Federal Government and/or American National Standards Institute or shall be submitted with the building permit application.*
- (8) *Except as may be required by law, no advertising of any type may be placed on the facility, auxiliary structures, or the host structure.*
- (9) *The facility and all mounting devices and auxiliary structures shall be submitted at time of application.*
- (10) *The facility and auxiliary structures shall be dismantled and the property restored to its original condition within ninety (90) days if the facility ceases to be used for wireless telecommunications purposes for a period exceeding six (6) consecutive months. Surety or an irrevocable line of credit in an amount sufficient to cover the costs of dismantling the facility, auxiliary structures, and site restoration plus reasonable administrative costs shall be provided to the county prior to the issuance of the building permit. Such surety or line of credit shall remain in full force throughout the life and use of the facility and may only be released by the county. The surety or line of credit shall be in a form approved by the County Attorney.*
- (11) *The county shall be notified no later than 1 March of each year of the name, address, and telephone number(s) for the owner and each co-located lessee on the structure and the registered agent for each.*
- (12) *Each telecommunications service provider who locates or otherwise places wireless communications equipment on the facility, auxiliary structures, or the host structure, or on the property shall obtain a building permit from the County prior to attaching the equipment to the structure or erecting any accessory structures within or adjacent to the existing structure.*

- c. A conditional use permit may be issued by the zoning administrator without public hearing and without Planning Commission review and approval of the Board of Supervisors provided that all the conditions in the Code of New Kent are met. Notwithstanding the fact that all conditions may be met, when in the sound discretion of the zoning administrator additional conditions are required for the public health, safety, and welfare and for good zoning practice the applicant will be required to seek approval for the facility pursuant to either section 98-745(b)(16) or section 98-745(b)(17).*
- d. If the zoning administrator refuses to issue a permit pursuant to this section, the applicant has the right to proceed to seek approval under section 98-745(b)(16) or section 98-745(b)(17).*



Richard S. Ellyson
Interim County Administrator



W. R. "Ray" Davis, Jr.
Chairman