

NO. COA14-712

NORTH CAROLINA COURT OF APPEALS

Filed: 3 February 2015

DOLLY FEHRENBACHER,
MELVIN FEHRENBACHER,
AARON C. CROOM,
DOROTHY CROOM,
STUART PIMM, JULIA PIMM,
LARRY KENSIL and SUSAN KENSIL,
and GOOD NEIGHBORS OF 751, an
Unincorporated Association,
Petitioners,

v.

Durham County
No. 13 CVS 3680

CITY OF DURHAM, a North
Carolina Municipality, and
DURHAM COUNTY, a North
Carolina County,
PHILIP POST & ASSOCIATES,
INC., GREEK ORTHODOX
COMMUNITY OF DURHAM,
NORTH CAROLINA, INCORPORATED,
and SPRINTCOM, INC.,
Respondents.

Appeal by Petitioners from order entered 20 March 2014 by
Judge Howard E. Manning, Jr., in Durham County Superior Court.
Heard in the Court of Appeals 6 November 2014.

*The Brough Law Firm, by Robert E. Hornik, Jr., for
Petitioners.*

*Styers & Kemerait, PLLC, by Karen M. Kemerait, for
Respondents Philip Post & Associates, Inc.; Greek Orthodox
Community of Durham, North Carolina, Inc.; and SprintCom,
Inc.*

Office of the City Attorney, by Senior Assistant City Attorney Donald T. O'Toole, for Respondent City of Durham.

Durham County Attorney Bryan Wardell for Respondent Durham County.

STEPHENS, Judge.

This is a case about a giant fake pine tree and what it means to conceal the aesthetic externalities of modernizing our State's telecommunications grid. The Petitioners are a group of homeowners who object to the Durham City-County Board of Adjustment's decision to approve construction of a 120-foot-tall cell tower on the property of St. Barbara Greek Orthodox Church, literally across Highway 751 from their backyards. The Respondents include the City of Durham and Durham County, which approved the plans; the Greek Orthodox Community of Durham, which owns the land where the tower will be built; telecommunications conglomerate SprintCom, which will build, own, and operate the tower; and Philip Post & Associates, Inc., which filed the initial application to build the tower on behalf of SprintCom. Petitioners contend that the trial court, which granted *certiorari* to hear their appeal pursuant to N.C. Gen. Stat. §§ 160A-393 and 153-349, erred as a matter of law in affirming the Board of Adjustment's determination that

SprintCom's proposed cell tower, which is designed as a "monopine" in order to blend in with a nearby grove of trees, qualifies as a concealed wireless communications facility as defined by Section 16.3 of Durham's Unified Development Ordinance. Petitioners also argue that the trial court erred by requesting and accepting photographic simulations from SprintCom that were not part of the record before the Board of Adjustment, and that the record provided in response to the trial court's grant of *certiorari* was inadequate. After careful review, we hold that the trial court did not err in affirming the Board of Adjustment.

I. Facts and Procedural History

On 5 January 2012, Respondent City of Durham received an application from Philip Post & Associates, Inc., acting on behalf of SprintCom, seeking approval pursuant to Durham's Unified Development Ordinance ("UDO") to construct a 120-foot-tall cell tower on a leased portion of a five-acre lot owned by the Greek Orthodox Community of Durham. The property, which is home to the St. Barbara Greek Orthodox Church of Durham, is located within the City of Durham's corporate limits at 8306 Highway 751, in an area zoned Rural/Residential.

The plans for the proposed tower utilize a monopine design, which is intended to give the tower the appearance of a tall pine tree, rather than a cell tower, so that it blends in with a grove of actual pine trees already standing on the Church property and qualifies as a concealed wireless communications facility ("WCF") under Durham's UDO. Section 16.3 of the UDO defines a concealed WCF as:

A [WCF], ancillary structure, or WCF equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed uses on a site. A concealed facility may have a secondary function including, but not limited to the following: church steeple, windmill, bell tower, clock tower, cupola, light standard, flagpole with or without a flag, or tree. A non-concealed [WCF] is one that is readily identifiable such as a monopole or lattice tower.

Durham Unified Dev. Ordinance art. 16, § 3 (2006). Section 5.3.3N of the UDO regulates the construction and placement of WCFs and provides that a proposed cell tower that meets the definition of a concealed WCF provided in section 16.3 is subject to an administrative site plan approval process, whereas a tower that does not meet the definition of a concealed WCF can only be approved after obtaining a minor special use permit, which requires a quasi-judicial evidentiary hearing. *Id.* at art. 5, § 3.3N.

On 6 July 2012, the Durham City-County Development Review Board ("DRB") reviewed SprintCom's application and approved it by a vote of eight to one. Petitioners appealed DRB's decision to the Durham City-County Board of Adjustment. The Board of Adjustment heard Petitioners' appeal on 22 October 2012 and remanded the matter back to DRB for further consideration in light of defects and deficiencies in Respondents' application.

On 13 November 2012, SprintCom requested an official interpretation from Durham City-County Planning Director Steven L. Medlin regarding whether or not its proposed monopine tower meets the definition of a concealed WCF provided by the UDO. On 10 January 2013,¹ Planning Director Medlin concluded that SprintCom's proposed monopine tower does, in fact, satisfy UDO section 16.3's definition of a concealed WCF based on the following facts:

- 1) The American Planning Association (APA) is a primary source of defining "best practice" in the field of urban and regional planning. An August, 2011, edition of "Zoning Practice" . . . regarding telecommunications issues states that " . .

¹ As the result of an apparent clerical error, Planning Director Medlin's interpretation is dated "5 November 2012," which is impossible given that SprintCom did not ask for his opinion until eight days later. Petitioners and their counsel received copies of Planning Director Medlin's interpretation on or about 10 January 2013.

. in rural and suburban areas, towers are effectively concealed as trees and are nearly indistinguishable from the real thing (apart from being taller than nearby trees)." Based on this standard the monopine tower design clearly mee[t]s the threshold of not being "readily identifiable" as a wireless communications facility.

2) Since the current wireless communications facility (WCF) review and approval standards were put in place in Durham (in 2004), there have been fifteen (15) new WCF towers constructed in Durham. . . . Thirteen (13) of these have been monopines of equal or lesser design quality to the monopine tower proposed [in the present case]. As such, approval of the proposed design is consistent with over eight years of practice in Durham.

On 6 February 2013, Petitioners filed a timely appeal from Planning Director Medlin's interpretation to the Board of Adjustment.

On 28 May 2013, the Board of Adjustment held a hearing at which several of the Petitioners testified that their opposition to SprintCom's proposed monopine tower was rooted in concerns about public health and safety, given the presence of two high pressure gas transmission lines already running across the Church property, as well as the tower's potential adverse impact on their property values. Petitioners presented photographs of a test they performed by filling balloons with helium and raising them to an altitude of 120 feet to illustrate how the proposed

monopine tower will be twice as high as the surrounding trees on the Church property, the tallest of which currently stands at 60 feet. They also testified that the tower's base will be five times wider than the diameter of the largest trees now present in the area, many of which will need to be cleared before construction can commence. Based on its size and visibility from their homes, Petitioners contended that SprintCom's proposed monopine tower cannot possibly meet the UDO's definition of a concealed WCF. Nevertheless, the Board of Adjustment voted unanimously to uphold Planning Director Medlin's official interpretation.

On 17 July 2013, pursuant to N.C. Gen. Stat. §§ 160A-388 and 153A-349, Petitioners appealed the Board of Adjustment's decision to Durham County Superior Court by a petition for review in the nature of *certiorari*. When their appeal came to be heard on 10 March 2014, Petitioners argued that the Board's decision was arbitrary, capricious, not supported by substantial competent evidence in the record, and affected by errors of law. The crux of their argument was that the Board erred in concluding that SprintCom's proposed monopine tower meets the definition of a concealed WCF provided by section 16.3 of the UDO. Alternatively, due to a recording malfunction that caused

the first third of the 28 May 2013 Board of Adjustment hearing to go unrecorded, Petitioners contended that the record before the trial court was inadequate, failed to comply with the requirements of N.C. Gen. Stat. § 160A-393(i) and the Board's own Rules of Procedure, and deprived them of due process of law. Petitioners also objected when the trial court directed SprintCom's counsel to submit additional photographic simulations—which were originally included in its application to the City of Durham—of what the proposed monopine tower would look like.

On 19 March 2014, based on the record, the oral arguments of the parties, and the photographic simulations, the trial court issued an order affirming the Board of Adjustment's decision that SprintCom's proposed monopine tower meets the definition of a concealed WCF provided in section 16.3 of the UDO. The trial court found as facts that SprintCom's proposed monopine tower "is not readily identifiable as a cell tower" and "will be aesthetically compatible with the existing uses on the St. Barbara Greek Orthodox Church Property since it will be located in the middle of a grove of existing pine trees adjoining Highway 751." Thus, the trial court concluded as a matter of law that the Board of Adjustment's decision was not

arbitrary, capricious, or erroneous, and dismissed Petitioners' appeal accordingly. Petitioners timely appealed to this Court.

II. Standard of Review

Our Supreme Court has made clear that the task of a court reviewing a decision of a municipal body performing a quasi-judicial function, such as the Board of Adjustment's decision here, includes:

- (1) Reviewing the record for errors [of] law,
- (2) Insuring that procedures specified by law in both statute and ordinance are followed,
- (3) Insuring that appropriate due process rights of a petitioner are protected including the right to offer evidence, cross-examine witnesses, and inspect documents,
- (4) Insuring that decisions of town boards are supported by competent, material and substantial evidence in the whole record, and
- (5) Insuring that decisions are not arbitrary and capricious.

Coastal Ready-Mix Concrete Co., Inc. v. Bd. Of Comm'rs of the Town of Nags Head, 299 N.C. 620, 626, 265 S.E.2d 379, 383, *reh'g denied*, 300 N.C. 562, 270 S.E.2d 106 (1980). "Where the appealing party contends that the decision was unsupported by the evidence or was arbitrary and capricious, the trial court

applies the whole record test." *Welter v. Rowan Cnty Bd. of Comm'rs*, 160 N.C. App. 358, 361, 585 S.E.2d 472, 475 (2003) (citation and internal quotation marks omitted). "The whole record test requires the reviewing court to examine all competent evidence (the whole record) in order to determine whether the agency decision is supported by substantial evidence." *Amanini v. N.C. Dept. of Human Res.*, 114 N.C. App. 668, 674, 443 S.E.2d 114, 118 (1994) (citation and internal quotation marks omitted). "The whole record test does not allow the reviewing court to replace the Board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it *de novo*." *Thompson v. Wake Cnty. Bd. of Educ.*, 292 N.C. 406, 410, 233 S.E.2d 538, 541 (1977) (citation omitted).

However, if the appealing party contends the decision was based on an error of law, the trial court employs a *de novo* review. See *In re Appeal of Willis*, 129 N.C. App. 499, 501, 500 S.E.2d 723, 725 (1998). "Under a *de novo* review, the superior court consider[s] the matter anew[] and freely substitut[es] its own judgment for the agency's judgment." *Mann Media, Inc. v. Randolph Cnty. Planning Bd.*, 356 N.C. 1, 13, 565 S.E.2d 9, 17 (2002) (citation and internal quotation marks omitted;

alterations in original). "Moreover, [t]he trial court, when sitting as an appellate court to review a [decision of a quasi-judicial body], must set forth sufficient information in its order to reveal the scope of review utilized and the application of that review." *Sun Suites Holdings, LLC v. Bd. of Aldermen of Town of Garner*, 139 N.C. App. 269, 272, 533 S.E.2d 525, 528, *disc. review denied*, 353 N.C. 280, 546 S.E.2d 397 (2000) (citation and internal quotation marks omitted; alterations in original).

When this Court reviews the decision of a trial court reviewing a municipal board's decision, we

examine[] the trial court's order for error of law. The process has been described as a twofold task: (1) determining whether the trial court exercised the appropriate scope of review and, if appropriate, (2) deciding whether the court did so properly.

Welter, 160 N.C. App. at 362, 585 S.E.2d at 476 (citation and internal quotation marks omitted).

III. Analysis

A. Inadequate Record

Petitioners first argue that the record provided by Respondent City of Durham to the trial court was so inadequate as to deprive them of their right to due process as established

by N.C. Gen. Stat. § 160A-388(e2)(2) and § 160A-393(i) and (j).
We disagree.

Our General Statutes guarantee that “[e]very quasi-judicial decision [by a municipal board of adjustment] shall be subject to review by the superior court by proceedings in the nature of *certiorari*” N.C. Gen. Stat. § 160A-388(e2)(2)(2013). Section 160A-393 lays out the process for *certiorari* review of a quasi-judicial decision and provides in relevant part that “[t]he court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with subsection [(i)]² of this section.” N.C. Gen. Stat. § 160A-393(j). Subsection (i) provides in relevant part that

[t]he record shall consist of all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made.

N.C. Gen. Stat. § 160A-393(i).

² Although the text of N.C. Gen. Stat. § 160A-393(j) actually refers to subsection (h), we note that this appears to be a typographical error, given that subsection (i) addresses the contents of the record, whereas subsection (h) provides the rules governing motions to intervene.

In the present case, Petitioners contend that their ability to present the trial court with an accurate record of the proceedings below was prejudiced due to a combination of Respondent City of Durham's "minimalist approach to minute-keeping" and a recording malfunction that caused the first third of the testimony from the Board of Adjustment's three-hour hearing on 28 May 2013 to go unrecorded. Specifically, Petitioners emphasize that the recording malfunction resulted in the inadvertent exclusion of substantial portions of their own testimony from the record, a problem exacerbated by the fact that the minutes of the Board's meeting do not include any summary of the evidence or arguments they presented. Moreover, Petitioners insist that because subsection (i) provides that "an audio or videotape of the meeting or meetings at which the decision being appealed was considered" shall be included in the record if any party so requests, see *id.*, and because the trial court requested "the complete record . . . including all minutes, audiotapes, videotapes and transcripts of all meetings and hearings regarding the appeal as may exist," they have been deprived of their right to due process and both the trial court and this Court have been deprived of a meaningful opportunity to review their case. As a result, Petitioners contend this Court

should reverse the trial court's decision and remand the matter back to the Board of Adjustment for a new, full hearing. In support of their argument, Petitioners rely on this Court's decision in *Welter*.

Petitioners' reliance on *Welter* is misplaced. In *Welter*, we declined to interpret a zoning ordinance provision, and remanded the case back to the trial court, because relevant portions of the ordinance "necessary for a proper interpretation" of the portions at issue were not included in the record on appeal. 160 N.C. App. at 363, 585 S.E.2d at 477. Here, by contrast, Petitioners do not contend that any pertinent portions of the UDO are missing from the record. Although a substantial portion of their testimony before the Board was not recorded due to an equipment malfunction, the record prepared by Respondents did include a copy of Petitioners' appeal to the Board. That appeal included, *inter alia*, an affidavit from Petitioner Dolly Fehrenbacher providing information about, and photographs of, the trees already standing on the Church property and the balloon test she and her neighbors conducted. Because Petitioners have not specifically identified any other competent or substantial evidence that might be missing from the record as a result of the recording malfunction and which would have

prevented the trial court from fully reviewing the merits of their claim, we conclude that the record adequately conveyed the substance of their missing audio testimony. Moreover, because Petitioners' argument that the record fails to comply with the requirements articulated in subsection (i) depends on a selective reading of the statute that ignores its final clause—which makes clear that the record need only contain an audio recording of the meeting “if such a recording was made”—we conclude this argument is without merit. See N.C. Gen. Stat. § 160A-393(i).

B. Improperly included photographic simulations

Petitioners next contend that the trial court erred when it requested SprintCom to provide photographic simulations of the proposed monopine tower that were submitted with its original application but were not part of the record before the Board of Adjustment. We disagree.

In support of this argument, Petitioners rely on a narrow reading of the interplay between sections 160A-393(i) and (j). As already discussed, subsection (i) establishes the contents of the record for *certiorari* review, including all materials considered by the decision-making board. Subsection (j), on the other hand, provides the trial court with discretion to

supplement the record "with affidavits, testimony of witnesses, or documentary or other evidence" on a limited range of issues including whether the parties have standing, whether conflicts of interest compromised the Board's impartiality, violations of procedural due process rights, and allegations that the Board exceeded its statutory authority. See N.C. Gen. Stat. § 160A-393(j). Thus, because SprintCom's photographic simulations were not part of the record before the Board of Adjustment and do not fall within the parameters of subsection (j), Petitioners claim they have been prejudiced by a violation of statutory procedure and request that this Court reverse the trial court's determination and remand the matter back to the Board of Adjustment.

We note that here again, Petitioners rely on a selective reading of subsection (i), one that conveniently ignores its provision that "[t]he parties may agree, or the court may direct, that matters unnecessary to the court's decision be deleted from the record *or that matters other than those specified herein be included.*" N.C. Gen. Stat. § 160A-393(i) (emphasis added). In other words, subsection (j) is not the only provision of the statute that vests discretionary authority in the trial court to supplement the record. Therefore, it was not

improper for the trial court to request that SprintCom submit photographic simulations that were included in its original application for the court's *de novo* consideration of whether the Board erred in its determination that the proposed monopine tower qualifies as a concealed WCF. Finding no violation of statutory procedure, we need not address Petitioners' claims of prejudice, and we accordingly conclude that this argument is without merit.

C. Definition of concealed WCF

Finally, Petitioners contend that the trial court erred in affirming the Board of Adjustment because its determination that SprintCom's proposed monopine tower qualifies as a concealed WCF as defined by UDO section 16.3 was both arbitrary and capricious, and erroneous as a matter of law. We disagree.

"Questions involving the interpretation of ordinances are questions of law," and in reviewing the trial court's review of the Board of Adjustment's decision, this Court applies a *de novo* standard and may freely substitute its judgment for that of the trial court. See *Ayers v. Bd. of Adjustment for Town of Robersonville*, 113 N.C. App. 528, 530-31, 439 S.E.2d 199, 201, *disc. review denied*, 336 N.C. 71, 445 S.E.2d 28 (1994). When reviewing an interpretation of a municipal ordinance, we apply

the general rules of statutory construction. See *Westminster Homes, Inc. v. Town of Cary Zoning Bd. of Adjustment*, 354 N.C. 298, 303, 554 S.E.2d 634, 638 (2001). In doing so, "[t]he basic rule is to ascertain and effectuate the intention of the municipal legislative body." *Id.* at 303-04, 554 S.E.2d at 638 (citation and internal quotation marks omitted). As with statutory construction, where the language of an ordinance is "plain and unambiguous, the court need look no further." *Id.* (citation omitted). Where the language of an ordinance is ambiguous, our well-founded principles of statutory construction dictate that,

[f]irst, we presume that no part of a statute is mere surplusage, but that each provision adds something not otherwise included therein. . . . Second, words and phrases of a statute may not be interpreted out of context, but must be interpreted as a composite whole so as to harmonize with other statutory provisions and effectuate legislative intent, while avoiding absurd or illogical interpretations. . . . Additionally, we find instructive this Court's use of the long-standing rule of statutory construction: *expressio unius est exclusio alterius*, meaning the expression of one thing is the exclusion of another.

Fort v. Cnty. of Cumberland, 218 N.C. App. 401, 407, 721 S.E.2d 350, 355, *disc. review denied*, 366 N.C. 401, 735 S.E.2d 180 (2012) (citations and internal quotation marks omitted).

In the present case, turning first to the UDO itself for evidence of the legislative municipal body's intent, we note that when Durham's Planning Department implemented its current WCF review and approval standards in 2004, it sought to balance the goals of "[p]rotect[ing] the unique natural beauty and rural character of the City and County while meeting the needs of its citizens to enjoy the benefits of wireless communication services." Durham Unified Dev. Ordinance art. 5, § 3.3N-7. Thus, Section 16.3 of the UDO incentivizes the construction of concealed WCFs, which it defines as

[a] [WCF], ancillary structure, or WCF equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed uses on a site. A concealed facility may have a secondary function including, but not limited to the following: church steeple, windmill, bell tower, clock tower, cupola, light standard, flagpole with or without a flag, or tree. A non-concealed [WCF] is one that is readily identifiable such as a monopole or lattice tower.

Id. at art. 16, § 3. Here, while acknowledging that SprintCom's proposed monopine design is consistent with the examples of concealed WCF designs enumerated in the ordinance's second sentence, Petitioners insist that the ordinance requires a site-specific determination, and that under such an approach, the monopine fails to meet the definition provided by the first

sentence in two related ways. Specifically, Petitioners argue that: (1) because it is undeniably larger than any of the trees already standing on the Church property, the proposed monopine tower will be readily identifiable as a WCF, and (2) because the only recognized "use" of the Church property is as a church, the proposed monopine tower is not aesthetically compatible with any existing or proposed uses on the site. While we agree with Petitioners' general point that the UDO does appear to call for a site-specific determination, given its express requirement that a WCF must be aesthetically compatible with existing uses in order to qualify as concealed, we are not persuaded by Petitioners' specific arguments about this WCF at this site.

(1) Readily identifiable

On the one hand, Petitioners contend the record clearly and unequivocally demonstrates that SprintCom's proposed monopine tower will be readily identifiable because at a height of 120 feet, it will stand twice as tall as the tallest surrounding trees on the Church property, while its base will be more than five times greater in diameter than that of an average tree. However, Petitioners' premise, which treats "readily identifiable" as a term synonymous with "visible," is undermined by the final sentence of the ordinance, which sheds light on

what the UDO means by "readily identifiable" through providing two specific examples of non-concealed WCFs. To wit, "a monopole or lattice tower" would be considered "readily identifiable" as a WCF, which is sensible because no steps would be taken to give it a secondary function that could camouflage its function as a WCF. By contrast, SprintCom's proposed tower will utilize a monopine design that has the secondary function of a tree by featuring authentic looking bark and branches and, as noted in Planning Director Medlin's official interpretation, is recommended by the American Planning Association as "nearly indistinguishable from the real thing (apart from being taller than nearby trees)."

Petitioners counter that simply looking like a pine tree is not sufficient because the monopine will stick out like a sore thumb due to its height, and will thus still be readily identifiable as a WCF. Of course, this argument ignores the photographic simulations that SprintCom provided to the trial court demonstrating that from many vantage points the monopine will not be visible while from others it will have the appearance of an unusually tall tree. We also note that this monopine's proposed height is within the maximum height limitation set by the UDO for Rural/Residential zoning

districts, see Durham Unified Dev. Ordinance art. 5, § 3.3N-13a(1), while the fact that its base will be five times wider than an average tree's is irrelevant, given that the base will be concealed from sight by actual trees.

Further, Petitioners' argument revolves around a more colloquial construction of the term "readily identifiable" than the UDO provides, one that by ignoring the full text of subsection 16.3, begs the question: *readily identifiable to whom, exactly?* There is no evidence in the record to support the inference implicit in Petitioners' argument that a reasonable person's typical reaction to the sight of an unusually tall pine tree is to conclude that he or she has just spotted a WCF. While we recognize that the record does not include Petitioners' full testimony from the Board of Adjustment hearing due to the aforementioned recording malfunction, we are not convinced that Petitioners' own perceptions of SprintCom's proposed monopine tower would be the proper vantage point from which to judge whether or not the tower is readily identifiable as a WCF. If anything, the way Petitioners use the term "readily identifiable" implies a lack of prior knowledge by the viewer, insofar as it suggests that an object or its function would be obvious or immediately apparent upon first glance, whereas

Petitioners themselves already are and likely always will be acutely aware of the fact that SprintCom's proposed monopine tower is not actually a tree. In any event, the UDO's plain language makes clear that the test here is not whether or how quickly a longtime resident or passing motorist would notice this giant fake pine tree's true nature; rather, the test is whether SprintCom's proposed monopine design serves a secondary function that helps camouflage the tower's function as a WCF. Because we conclude that it does, we hold that SprintCom's proposed monopine tower is not readily identifiable as a WCF.

(2) Aesthetic compatibility

Petitioners argue further that SprintCom's proposed monopine tower is not aesthetically compatible with any existing or proposed uses on the Church property. In support of this argument, Petitioners highlight Planning Director Medlin's testimony that the only current "use" of the Church property is as a church, and they also emphasize that trees are not considered "uses" under the UDO. However, this argument depends on the erroneous presumption that SprintCom's proposed monopine tower is readily identifiable as a WCF. Moreover, while Petitioners may be correct that natural trees are not considered "uses" under the UDO, the second sentence of the definition of a

concealed WCF provided in section 16.3 explicitly states that "a concealed [WCF] may have a secondary function including, but not limited to . . . [a] tree." Durham Unified Dev. Ordinance art. 16, § 3. When this Court inquired during oral arguments about the Church property's broader surroundings, the parties explained that the property is located in a developing, rural residential neighborhood, surrounded by houses and trees. In light of the evidence in the record that monopine towers generally resemble tall trees, we conclude that SprintCom's proposed monopine tower's secondary function as a tree is indeed aesthetically compatible with the Church property's existing use as a church in a developing rural residential neighborhood, surrounded by houses and trees. In other words, we believe that by focusing so narrowly on "uses," Petitioners' argument misses the proverbial forest for the literal monopine. Accordingly, we hold that the trial court did not err in affirming the Board of Adjustment's determination that SprintCom's proposed monopine tower qualifies as a concealed WCF as defined by UDO section 16.3.

AFFIRMED.

Judges STEELMAN and DAVIS concur.