

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on August 27, 2001 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

**MEMBERS PRESENT:** Bill Beckwith, Chairman  
David Bartosh, Vice-Chairman  
Tom Mahon  
Larry Blanks  
Ron Mabra

**STAFF PRESENT:** Kathy Zeitler, Director of Zoning/Zoning Administrator  
Bill McNally, County Attorney  
Delores Harrison, Zoning Technician

**STAFF ABSENT:** Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

**Welcome and Call to Order:**

Chairman Beckwith called the meeting to order at 7:00 P.M. The Members of the Board and the Staff were introduced. The operating procedures of the hearing were then explained.

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**1. Consideration of the Minutes of meeting held July 23, 2001.**

Tom Mahon made the motion to approve the Minutes as circulated. Ron Mabra seconded the motion. The motion passed 4-0-1 with David Bartosh abstaining from the vote due to being absent at the July Public Hearing.

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**2. Consideration of Petition No. A-508R-01, H.D. Thames, Jr. and Carolene Thames, Owners, and Ben Skipper of Powertel-Preferred Sites, Agent, request a 1.37 mile Variance to reduce the minimum separation distance between tower facilities from a minimum of 2.00 miles to a minimum of 0.63 miles; request a 160 foot Variance to reduce the side yard setback from a minimum of 200 feet to a minimum of 40 feet; and request a 15 foot Variance to reduce the front yard setback from a minimum of 200 feet to a minimum of 185 feet to construct a 180 foot Monopole Telecommunications Tower.**

Attorney Scott Taylor of Arnold , Holt, and Gregory Law Firm representing Powertel on behalf of petitioners, Ben Skipper, Agent, and H.D. and Carolene Thames, Owners stated that Powertel appreciated the Board rehearing the petition. He explained that Powertel was a wireless communication company in Georgia and was currently building out its telecommunication infrastructure in the southeast, including Fayette County. He commented that Powertel attempted to co-locate whenever possible, in fact, seven (7) out of the eleven (11) Powertel locations in Fayette County had been co-locations. He advised that there were still some coverage problems in certain areas that required the construction of new facilities. He confirmed that one (1) area had been identified as the area along McDonough Road between Fayetteville and Lovejoy.

Attorney Taylor stated that Powertel's plans called for construction of a 180 foot monopole tower with a 50 foot by 50 foot lease area, and an access easement from McDonough Road on the Thames property which is zoned A-R and surrounded on three (3) sides by A-R property.

Attorney Taylor pointed out that the tower request required three (3) variances. He advised that the Fayette County ordinance required a tower separation distance of two (2) miles and there was an existing tower 0.63 miles away that was fully loaded and co-location was not possible on that tower.

He also addressed the side yard variance from 200 feet to 40 feet and a front yard setback from 200 feet to 185 feet. He noted that Powertel was trying to place the tower between a barn and a four (4) foot diameter oak tree on the property to better screen the tower facility. He stated that without the variances the tower would have to be located in the middle of a hay field where it would be very visible.

Attorney Taylor presented maps which indicated the coverage area and the need for Powertel to locate in the McDonough Road area to provide adequate coverage. He also presented photographs of the site to show the openness of the area, and the proposed location of the tower. He presented photographs of the existing nearby tower where they could not co-locate due to that tower not having the structural capability to support another antenna.

Attorney Taylor pointed out that the proposed tower would be a monopole type tower that would accommodate Powertel's antenna and three (3) others. He added that they were aware of the County's concern to screen the tower facility and were willing to do whatever the County recommends. He confirmed that they had received no opposition to the tower and respectfully requested approval of the variances.

Chairman Beckwith asked if there was anyone to speak in favor of the tower. With no response, he asked if there was anyone to speak in opposition. Hearing none, he closed the floor from public comments.

Larry Blanks asked Chairman Beckwith if the petition would require three(3) separate motions.

Chairman Beckwith replied that the petition would require three (3) separate motions since there are three (3) variance requests.

Larry Blanks made the motion to approve the tower separation from 2.0 miles to 0.63 miles. Ron Mabra seconded the motion.

Chairman Beckwith asked for any discussion.

Tom Mahon asked if there was a letter in the file from the other tower owner denying the co-location.

Attorney Taylor advised that he believed there is a letter on record in the file.

David Bartosh said he has recently read about telecommunications antenna being located in church steeples and on existing power poles in other parts of the country, yet no one had approached the County with any of these options. He added he had heard of other technologies in areas such as Richmond, Virginia that had been very successful by placing boxes on utility poles approximately two (2) feet tall and one (1) foot wide with about a two (2) foot antenna which were really not noticeable. He commented that it seemed to him that tower companies should try some of these ideas to find the proper alternative to present, rather than just constructing more towers in the area.

Attorney Taylor responded that he could address some of those issues and that Ben Skipper could address some of the more technical issues as well. He commented that there are some different technologies out there, called stealth towers that are often shorter in residential areas or semi-residential areas and camouflaged to look like a pine tree or something similar, but the result is a 180 foot tree in the middle of a field which does not look natural.

Mr. Bartosh stated that is the reason he did not mention the pine trees.

Ben Skipper responded that the alternative of a church steeple houses a 65 foot antenna and typically covers a very small area, and that was an issue where they are changing from coverage to capacity objectives. He stated that was typical in Atlanta because they have many of these type antennas close together but don't have the capacity to handle the volume demand. He went on to say that Georgia Power and Coweta Fayette EMC have denied the use of their equipment for any attachment for

antennas or any of their ground for equipment housing. He added that option was pursued prior to submittal of the application.

Mr. Mahon asked why Powertel is only allowing four (4) users on this tower.

Mr. Skipper replied that the tower is being structurally built to accommodate four (4) users which is in compliance with the Fayette County Tower Ordinance.

Mr. Mahon asked if the proposed tower could be constructed to accommodate more users since the County is trying to reduce the number of towers being constructed. He said that Powertel needed to try to accommodate more and avoid this issue again in the near future.

Mr. Skipper advised the proposed tower would have the ability to accommodate more than four (4) users.

Mr. Bartosh stated that the Z.B.A. had heard this before, but then tower companies come back saying the place they need to place their antenna on the tower is unacceptable.

Chairman Beckwith asked if the proposed tower was meeting the ordinance for height and number of co-locators allowed.

Attorney Skipper advised that the proposed tower did meet these requirements and that they had tried to stay within the guidelines of the Fayette County Ordinance by keeping the tower at 180 feet, monopole design, and with a minimum of four (4) carriers.

Ron Mabra asked if this was the only property in the area that would hold the tower facility to accommodate the coverage area needed.

Mr. Skipper responded this was the only area they could locate to keep within the required 1,000 foot distance requirement from an off-site residence. He added that it would be difficult to meet this requirement with any other parcel in this area.

Mr. Bartosh advised that he understood about the past problems with utilizing the Georgia Power substations but asked if they had ever heard of any of the other technologies he had mentioned earlier. He went on to say that he was having a hard time understanding why the Z.B.A. was continually approached for additional towers when it seemed that other alternatives might be available.

Attorney Taylor responded that they pursue all alternatives available before they consider to construct a new tower and assured Mr. Bartosh that none were available in this case.

Chairman Beckwith remarked that before he called for a vote he wanted to clarify something. He advised that we, as a County, under the Telecommunications Act of 1996 could not deny the location of a tower based on an ordinance requirement which essentially restricted a telecommunications company from being competitive in an area.

Attorney Bill McNally advised that the company had attempted to co-locate on a tower that is owned by the County and is at maximum capacity. He further advised if the County did not allow Powertel to construct a tower in this location then how could they compete with the other companies in the area.

Mr. Mahon asked again about why they are only building a tower to accommodate four (4) carriers.

Attorney McNally pointed out that the County wanted the proposed 180 foot tower built to the highest specifications so that it would be able to accommodate as many users as a 180 foot monopole tower could structurally accommodate.

Mr Bartosh asked if legally the Z.B.A. was out of compliance if they denied the request.

Attorney McNally responded that Powertel had been trying to co-locate on towers which would limit the number of new towers in the County. He advised that the County had the choice of locating many shorter towers or fewer high towers. He pointed out that the B.C.C. had passed a law which sort of bridged the gap, however we could only limit where towers could locate within reason. He confirmed that the County also had to consider the Telecommunications Act which instructs tower companies to make their services available to the citizens. He pointed out that there was a great deal of latitude that goes between these two (2) laws and the County was trying to be fair to the tower companies while at the same time limiting the number of new towers sites in the County.

Mr. Bartosh asked if there were other alternatives out there or were they being arbitrary with these tower locations. He stated that he learned tonight from what Chairman Beckwith said that denial of these towers was not in compliance with FCC Laws. He added that this news to him and that he was a little puzzled as far as the competition part of that law goes.

Attorney McNally said he did not believe he stated anything other about the FCC regulations.

Mr. Bartosh said he was referring to the Telecommunications Act not the FCC.

Mr. Mahon asked if Mr. Skipper was willing to build a tower to accommodate the maximum number of users under the structural guidelines.

Mr. Skipper advised they planned to build the tower to accommodate the maximum number of users under the structural guidelines..

Larry Blanks advised he would like to amend the motion to add a condition of approval that the tower be built to accommodate the maximum number of users that the 180 foot tower could structurally hold. Ron Mabra seconded the amended motion.

Chairman Beckwith asked if there was any further discussion. Hearing none, he called for the vote. The motion was unanimously approved 5-0.

Chairman Beckwith asked for a motion on the second variance to reduce the side yard setback from a minimum of 200 feet to a minimum of 40 feet.

Tom Mahon said he wanted some clarification from Attorney Taylor on the layout of the property and the location of the tower. He asked if the variance was not granted, where would the tower be constructed on the property.

Mr. Skipper advised that they tried to work the barn and the large oak tree together with the landscaping around the compound to shield the tower facility as much as possible and not have to locate in the middle of a field.

Chairman Beckwith asked for a motion.

Tom Mahon made the motion to approve the side yard setback from a minimum of 200 feet to a minimum 40 feet. Ron Mabra seconded the motion.

Mr. Mahon said that he had driven by this field for 30 years and he believed that the proposed tower location was the best place on the subject property for reduced visibility of the tower.

Mr. Bartosh commented that he did not have a problem with this variance because the property is fenced and there is another field right next to the property.

Mr. Mabra said that since they had no objections to the location of the tower from neighbors then he felt the side yard variance was appropriate.

Mr. Blanks added that the adjoining property to the west was part of the Thames' farm.

Chairman Beckwith asked if there were any other comments.

The motion was approved 4-1 with David Bartosh voting in opposition.

Chairman Beckwith addressed the third variance for a front yard setback from a minimum of 200 feet to a minimum of 185 feet.

Tom Mahon made a motion to deny the third variance. Ron Mabra seconded the motion.

Attorney Taylor advised that Powertel would withdraw the third variance request.

Mr. Blanks asked about the buffer to the back of the property.

Attorney Taylor advised that the 15 foot difference would not affect the buffer, but it did abut the Thames' property.

Chairman Beckwith called for the vote for the third variance. The motion to deny the third variance carried 5-0.

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**3. Consideration of Petition No. A-513-01, Charles and Rita Middleton, Owners/Agents, request a 29.28 foot Variance to reduce a proposed side yard setback from a minimum of 50 feet to a minimum of 20.72 feet to allow an existing pool cabana to remain. This property is located in Land Lots 3 and 30 of the 5<sup>th</sup> District, fronts on Harp Road, and is zoned A-R.**

Charles Middleton, Owner requested a 29.28 foot variance to reduce the side yard setback from a minimum of 50 feet to a minimum of 20.72 feet. He explained that when he built his pool cabana in 1985 he checked to make sure that he had left enough of a side setback to be able to split his property in the future in case one (1) of his sons wanted to build a house later. He stated that at that time he was told that he only needed 25 feet of road frontage and a 50 foot side setback and there was no problem. He recently decided to split the lot and sell off some property and found out that the frontage had changed in 1992 from 25 feet to 100 feet, and now he did not have the required side yard setback of 50 feet from the newly proposed property line, so he requested the variance.

Chairman Beckwith asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition to the petition. Hearing none and with no rebuttal, he closed the floor from public comment.

Tom Mahon made a motion to deny the petition. David Bartosh seconded the motion.

Mr. Mahon asked if this would restrict Mr. Middleton from selling the property and wanted to make sure that there was a hardship.

Chairman Beckwith stated from what he understood the house and pool cabana were built before 1992 when the road frontage requirement for each lot changed from a minimum of 25 feet to 100 feet. He said that Mr. Middleton checked at the time to make sure he was in compliance, but the requirements had changed since then making his pool cabana too close to the property line when he later tried to subdivide the property.

Larry Blanks stated he agreed that when the ordinance changed he would have to move the building when it was there before the change and he wasn't aware of the change. He said he felt sure that had Mr. Middleton known the requirement would change that he would have put the pool cabana in a different location.

Mr. Mahon asked when the pool cabana was built.

Mr. Middleton advised that the pool cabana was built in 1985.

Chairman Beckwith noted that according to his report the ordinance changed to require 100 feet in 1992.

David Bartosh asked if this was the only possible access to the property.

Mr. Middleton advised that it was and his house sat right in the middle as indicated on his plat.

Mr. Blanks remarked that if Mr. Middleton had built the pool cabana after the Zoning Ordinance was changed and then came in asking for a variance he may have a problem with the variance but since he built the pool cabana and then the ordinance changed this problem was created by the ordinance change and not by something Mr. Middleton had done.

Chairman Beckwith concurred with Mr. Blanks.

Mr. Bartosh asked if this was a single homeowner who would build on the proposed lot.

Mr. Middleton replied that he hoped so. He added that the property used to be utilized by the Boy Scouts for camping but now he is retired and no longer needed all this property.

Chairman Beckwith asked if there were any further comments. Hearing none, he called for the vote. The motion to deny failed 0-5.

Chairman Beckwith called for another motion.

Larry Blanks made the motion to approve the petition. Ron Mabra seconded the motion. The motion was unanimously approved 5-0.

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Chairman Beckwith asked if there was any further business.

Kathy Zeitler advised that one (1) variance request had been submitted for the September Public Hearing.

There being no further business, Larry Blanks made the motion to adjourn the meeting. Ron Mabra seconded the motion. The motion unanimously passed 5-0. The meeting adjourned at 8:00 P.M.

**ZONING BOARD OF APPEALS**

**OF**

**FAYETTE COUNTY**

Respectfully submitted by:

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**BILL BECKWITH**  
**CHAIRMAN**

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**DELORES HARRISON**  
**ZONING TECHNICIAN**