

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on October 28, 2002 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
Ron Mabra
Larry Blanks

MEMBERS ABSENT: Tom Mahon

STAFF PRESENT: Kathy Zeitler, Director of Zoning/Zoning Administrator
Bill McNally, County Attorney
Karen Morley, B.O.C. Clerk
Deputy Warren Chamberlin
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

STAFF ABSENT: Delores Harrison, Zoning Technician

Welcome and Call to Order:

Chairman Beckwith called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present.

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1. Consideration of the Minutes of the meeting held on August 26, 2002.

Larry Blanks made the motion to approve the Minutes as circulated. David Bartosh seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent.

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Kathy Zeitler read the procedures that would be followed for presentation and opposition for petitions.

2. Consideration of Petition No. A-528-02, Jackie L. Mask, Owner, and Doug Barker, Agent, request a 495 foot Variance to reduce the distance between a tower facility and an off-site residence from a minimum of 1,000 feet to a minimum of 505 feet. This property is located in Land Lot 253 of the 4th District, fronts on S.R. 85 South and McBride Road, and is zoned A-R.

Doug Barker stated he was representing the property owner Jackie Mask and East Jasper Towers, LLC. He said that East Jasper Towers began looking into developing a communication tower along this stretch of S.R. 85 to meet the needs of multiple wireless carriers. He reported that they first began seeking a site in this area by reviewing the Fayette County Zoning Ordinance to determine favorable locations. He commented that Fayette County designates 1,000 feet on either side of S.R. 85 as a highway corridor and also as a favorable location for tower facilities.

Mr. Barker presented tax maps on the overhead projector which indicated the highway corridor consisting of 1,000 feet on each side of S.R. 85 South. He explained that the maps also indicated parcels in the area which met all the requirements, however the parcels were County properties utilized for schools. He confirmed that the ordinance does not allow towers on school or day care properties. He reported that he contacted the schools and they refused to allow a tower on their property. He advised that there was one other tract directly across the street from the proposed site, which belonged to a church, however they did not want to enter into an agreement for a tower to be located on their property.

Mr. Barker noted that there is a gas station which is surrounded by Mr. Mask's property which gives a commercial feel to the area which was the most favorable location in this area. He confirmed that there are residential areas around the subject property, therefore they had reduced the proposed tower height to 195 feet even though the highway corridor allowed a tower 250 feet in height. He explained that by reducing the height of the tower, the F.A.A. would not require the tower to be lit. He went on to say that residents usually complain about lights on a tower. He noted that the tower would be located in the woods to further shield the view of the tower.

Mr. Barker stated that there was a need for a tower by numerous tower carriers. He said that Cingular has been trying to provide coverage to this area for over a year and he thought they had appeared before the County a couple of times but had not been successful. He remarked that he had contacted Cingular and confirmed that they are still seeking a site in this area and the proposed site is under review by their RF Engineers. He added that Verizon and AT&T had also begun to develop their towers along S.R. 85 South and were also currently reviewing this site. He submitted a letter of intent from Sprint stating they will sign a lease to co-locate on the proposed tower site.

Mr. Barker explained that towers not only have to meet County requirements but also Federal guidelines through the F.C.C. He commented that the F.C.C. relies on the Georgia Department of Natural Resources with the State Historical Preservation Review. He said that their function is to ensure that a tower does not affect the historical integrity of the area including properties listed on the National Register of Historical Places and properties that are eligible for listing on the National Register. He confirmed that there are numerous homes in the area which are over 50 years old and thus would be eligible. He reported that a balloon test was performed to ensure that the tower would not have an impact on those homes. He explained that a four (4) foot diameter red balloon was raised to a height of 195 feet at the site location, and photographs were taken from these structures. He confirmed that the balloon was not visible from any of the historic structures and added it was not visible from very many places at all, but there was some visibility along S.R. 85 South. He submitted a letter of approval from the G.D.N.R. which indicated that the tower would not have an impact on any of the historic properties.

Mr. Barker stated that due to the size and shape of the subject property that there is no location on this piece of property where the 1,000 foot requirement from an off-site residence could be met. He commented that they had chosen the best location for the tower by situating it in the woods and lowering the height and trying to avoid any adverse impact on surrounding homeowners. He reiterated that there is no site where the 1,000 foot requirement can be met either inside or outside the highway corridor. He commented that should relief be granted that it would cause no detriment to public good, but it would meet the large public demand for wireless services and 9-1-1 service. He said the County was in search of a place to locate their 9-1-1 backup equipment. He advised that he had submitted a letter to the County stating that East Jasper Towers is willing to donate any space needed by the County for their antennas and ground space.

At this time, Mr. Barker reserved his remaining time for rebuttal. He respectfully requested approval of the petition.

Chairman Beckwith asked if there was anyone to speak in favor of the petition.

Lee Wright of 249 Chappell Road said he had been a resident for 36 years. He stated that it was his understanding that just south of this tower that Fayette County has a site at the corner of S.R. 85 and Porter Road and are in the process of erecting their own tower which is about 2,800 feet from a tower that was rejected on 28 acres. He pointed out that the County's tower did not meet the 1,000 foot setback from an off-site residence or the 200 foot property line setback. He commented that if the County's tower is truly for 9-1-1 then he is 100% for it and the County should not have to follow any type of guidelines, but if the County's tower is going to sub-lease, management agreement, equipment swapping, or collecting any type of revenue then it should have to follow the same guidelines as any other tower.

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Chairman Beckwith asked Mr. Wright if he was addressing another site or the subject site.

Mr. Wright replied the subject site. He explained that this site should not have to follow the guidelines if the County's site does not follow the guidelines. He commented that there are several carriers looking for space in this area. He remarked that if this tower is denied the only tower in the area would be the County tower which is revenue coming in for the County which places the County in competition with the tower companies. He reiterated that if the County tower is going to be used for commercial property too then the guidelines need to be released for other towers and give them strong consideration whether they meet the setbacks or not.

Chairman Beckwith asked if there was anyone to speak in opposition of the petition.

Robert Carioca of 676 McBride Road said he had been a resident for six (6) years. He stated that the tower would be an eyesore and did not belong in a residential area. He advised that McBride Road is zoned A-R. He noted that he owns 10 acres and also has horses. He reported that there are farms up and down the road and the scenery is beautiful. He commented that he did not want to see anything detract from the beauty of the area, which is the reason his family located on McBride Road. He said that the tower would be a detriment to property values. He went on to say that when he was looking for property to purchase that he did not want to be near any high power lines or cellular towers since there are obviously health risk associated with both and he did not want to be exposed to them. He remarked that a cell tower belongs in an industrial area and not in the subject location. He stated that no one should be exposed to the risk or have to look at the tower on a daily basis where it will detract from the property values. He disagreed that the 190 foot balloon could not be seen because 190 feet is higher than the top of the trees. He confirmed that his house was located .50 mile from S.R. 85 South and approximately 1/8 of a mile from the tower site and he said he could guarantee he could see the tower from his property, and added that it did not belong in his backyard or anyone else's backyard.

Tim Thoms of 625 McBride Road said his driveway is one (1) mile east of S.R. 85 South. He said that as the "crow flies" his house is probably less than .50 mile from the tower. He objected to the granting of the variance. He stated that standards had been set for towers for a reason and there needed to be a very good reason to overrule those requirements. He commented that the petitioner needed to look for property that complied with the requirements. He remarked that a tower could not be located on the same lot as a school or day care but no reasons were stated. He confirmed that he is a member of Christ Church at Whitewater and the Pastor was unaware of the petition so he wanted to know who Mr. Barker spoke with at the church. He advised that his church has a pre-school which operates five (5) days per week. He pointed out that the tower would be located between Whitewater Middle School and the new elementary school. He noted that the applicant has to address hardship versus convenience, but the applicant had only addressed some of the issues. He said he would like to know the hardships for why the tower could not be developed in other locations which may have less impact on residential areas. He commented that the tower would not impact only one (1) house but several houses which are closer than 1,000 feet. He remarked that he is a cell phone user and has three (3) lines. He asked if the applicant had consulted other carriers to locate their signal on those towers. He also asked what would be gained by developing this tower is another tower is going to be located two (2) miles down the road. He concluded that it was hard to believe that you could not see a balloon 195 feet high over the trees.

In rebuttal, Mr. Barker remarked that as far as the tower being an eyesore, a tower is a tower and there is no way to disguise a tower from not looking like a tower. He said that they have done everything that they could by locating the tower in the woods and lowering the height to avoid lighting and are trying to be a good neighbor. He stated that towers do not drop property values. He confirmed that numerous studies had been performed using Land Development Analysis which is a real estate type company that determines property values/sale values prior to the location of a tower and sale values after towers are developed, and there has never been a property which has decreased in value due to a tower. In regard to health risks, he confirmed that they are governed by the F.C.C. who regulates the amount of power outage the carrier may utilize. He noted that there are no industrial areas along S.R. 85 South. He went on to say that they spoke with the church directly

across S.R. 85 South and they indicated they had been contacted by two (2) other companies in an attempt to locate a tower in the area but they declined because they wanted to leave room for expansion.

Mr. Barker explained that the tower company cannot do the balloon test because the Georgia State Historic Preservation won't allow them to perform the test. He advised that they used Michael Gool of Gool Digital Imaging who operates as a representative of the Department of Natural Resources. He explained that Mr. Gool is very accurate and presented photographs of the balloon test which were taken by Mr. Gool. He said that one picture is directly adjacent to the site, one at .50 mile down McBride Road, and the last one at just under a mile down McBride Road around a bend. He advised that the balloon was not visible.

Mr. Barker confirmed that SprintCom analyzed the proposed County tower site to the south and stated that they cannot utilize the tower per their Radio Frequency Engineers. He said that SprintCom had commented that if they could not locate on the subject tower that they would still look for a site in the area. He stated that if they could have avoided filing a variance and gone with an administrative approval then they would have certainly done so. In conclusion, he remarked that he had addressed all of the public comments and would be happy to answer any questions from the Z.B.A.

At this time, Chairman Beckwith closed the floor from public comments.

David Bartosh made a motion to deny the petition. Ron Mabra seconded the motion.

Mr. Bartosh commented that his children attend Minter Elementary and that the signals are very bad in the area and a tower is most definitely needed especially for public safety. He said that there is not much we can do about the appearance of a tower so this is not so much of an issue as protecting the 1,000 foot requirement between the tower and an off-site residence. He asked if the tower could be moved closer to the commercial property and S.R. 85 South.

Mr. Barker replied that they looked at siting the tower closer to the commercial property but there are environmental problems with the underground tanks which have contaminated the soils at the gas station. He said soil testing was performed by utilizing boring samples but no well monitoring. He added that they also looked at siting the tower north but there are other adjacent homes in Shannon Subdivision. He advised that the property is relatively flat which will require little grading so construction costs are not an issue, only some costs for the clearing.

Mr. Bartosh stated that there appeared to be a better location on the subject property for the proposed tower.

Mr. Barker advised that there are additional homes not indicated on the site plan and as you move to the west you are closer to those homes. In addition, he stated that there is a house on the church property. He said the surveyors could not determine a location on site which met the 1,000 foot requirement.

Chairman Beckwith noted that if a variance is granted it would authorize the company to break an ordinance. He said the Z.B.A. was trying to minimize the effect as much as possible, but the requested variance amount is almost for half of the required setback. He asked if distances had been surveyed from all of the homes in the area.

Mr. Barker replied that the surveyors did not survey every home on Shamrock Road, only the closest to this parcel. He said that they attempted to find the most suitable location on this parcel. He stated that by placing the tower in the woods and trying to shield the view that this was the most suitable location. He requested to table the petition to allow the surveyors time to provide additional locations. He commented that there were additional locations on the subject property, but they went with the location which they felt was the best and they would welcome the Z.B.A. opinion on which location they felt was the best.

Chairman Beckwith said that the Z.B.A. could not tell them what to do and the Z.B.A. is not asking to find a location 950 feet away. He stated the Z.B.A. always looked for alternate ways to do something different than what seems to be the best but it may not be, it may just be convenient. He remarked that there may be other locations on site for the tower because there seemed to be some information missing and this was a serious consideration.

Larry Blanks commented that he was not really that convinced by the photographs of the balloon test. He said the Z.B.A. must consider more than just the need for a tower, and a 495 foot variance is exorbitant to request for reducing the required distance. He added that he could not support the variance request.

Ron Mabra said he was uncomfortable with the amount of the variance request. He stated that the B.O.C. were not in favor of reducing the requirement to 750 feet. He remarked that the words "exceptional circumstances" sticks in his mind and he does feel that exceptional circumstances have been presented.

Mr. Bartosh said he honestly would appreciate a tower in the area but this was not the right spot. He stated that the Z.B.A. would be more open to looking at placing the tower closer to the commercial business. He commented that the intent of the County is to protect the 1,000 foot setback. He added that other efforts could be made on the subject property for locating the tower.

Mr. Barker said that they had come forward with the location which they felt was the best.

Chairman Beckwith asked Attorney McNally if the variance was tabled then would the motions have to be withdrawn.

Attorney McNally replied yes sir.

David Bartosh withdrew his motion. Ron Mabra withdrew his second.

Ron Mabra made a motion to table the petition. Larry Blanks seconded the motion.

Chairman Beckwith asked Robyn Wilson if this would give her adequate time to run the legal advertisement since the November meeting had been moved forward one week.

Mrs. Wilson advised that the deadline for submittal to the newspaper had passed.

Mr. Blanks asked if a new ad would have to be run in order to table the petition until next month.

Attorney McNally advised that a new legal must be advertised since the distances and the amount of the requested variance would be changed, and Mr. Barker would need time to perform a revised study and resubmit his petition. He suggested to table the petition until December.

Ron Mabra made a motion to table the petition until December 16, 2002. Larry Blanks and David Bartosh seconded the motion. The motion to table unanimously passed 4-0. Tom Mahon was absent.

Mr. Barker thanked the Z.B.A.

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- 3. Consideration of Petition No. A-529-02, Robert C. Shell, Owner, and Sanober F. Sheikh, Agent, request a Change of the Nonconforming Use of a Structure from an Antique Shop to a Convenience/Grocery Store. This property is located in Land Lot 8 of the 6th District, fronts on S.R. 85 South, and is zoned A-R.**

Robert Shell of Padgett Road stated he had lived here for 36 years. He advised that he owned a country store which was located at S.R. 74 South and S.R. 85 South. He said he did not know why he was present and that he had been paying commercial tax on this property since he purchased it in 1966. He commented that he was told that a public hearing was necessary for Ms. Sheikh to be issued a business license.

Chairman Beckwith informed Mr. Shell that the reason he was appearing before the Z.B.A. is because he is requesting a nonconforming use of the structure which requires Z.B.A. approval.

Kathy Zeitler concurred and added that anytime there is a change from one nonconforming use to another nonconforming use the Z.B.A. must approve the change.

Chairman Beckwith verified that Ms. Sheikh wants to change the use from an antique shop to a convenience store.

Sanober Sheikh confirmed that the use would not be a convenience store but would be a grocery store and there would be no gasoline sales.

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 of the petition.

Kathy Zeitler read a letter of opposition from Charles Rogers of 100 Grindstone Way who left the meeting early, and he objected to the request and expressed concern about traffic problems.

At this time, Chairman Beckwith closed the floor from public comments.

Larry Blanks made a motion to approve the petition. David Bartosh seconded the motion for discussion purposes.

Mr. Blanks stated that the grocery store would be conditional to a number of County ordinances which must be complied with prior to the issuance of a business license. He pointed out that the subject property is a piece of commercially used property located on a commercial corridor. He said a small grocery store could probably be used on this side of the County.

Mr. Bartosh pointed out that there were conditions suggested in the analysis due to concerns about such items as parking spaces and deceleration/acceleration lanes. He stated that if the petition is granted by the Z.B.A. the applicant would have to comply with ordinance requirements and that it was very possible the property would not be able to meet all the criteria. He also asked what this would do to a Z.B.A. approval of this petition if they were later unable to meet the ordinances.

Ms. Zeitler advised that even with approval by the Z.B.A. if the applicant could not comply with the development requirements that he would not be able to be issued a business license nor open the business. She pointed out that this is a nonconforming structure and a nonconforming use on a nonconforming lot which is zoned A-R. She emphasized that the Z.B.A. needed to look at the current use as grandfathered in, but a change of use needed to be reviewed by the Z.B.A. to determine if it is a more intensive use than the present use. She noted that the change of use would require additional parking and a site plan would be required to locate the additional parking and how it meets the requirements. She reported that there are also intersection improvements required by D.O.T. which would be indicated on a site plan.

Mr. Bartosh asked if the Z.B.A.'s approval would override the other regulations.

Mrs. Zeitler replied that it would not override the other regulations. She advised that the applicant's next step would be to get a site plan approved for a new use before a business license could be issued. She added that as part of the site plan approval all the requirements from each department and D.O.T. would have to be met.

Mr. Bartosh asked if the Z.B.A. grants approval for a grocery store and they are unable to meet the County and State guidelines what would happen.

Mrs. Zeitler replied that the applicant would have approval for a grocery store use on the property, but it is only the first approvals which is needed. She explained that if the site could not comply with the requirements for the approved use then and could not get the other approvals then the Z.B.A.'s approval really doesn't mean anything.

Mr. Bartosh asked if they could continue to operate the antique shop.

Mrs. Zeitler replied yes. She explained that the main reason the request goes to the Z.B.A. first before it goes through any other approvals is so the Z.B.A. can determine if the proposed use is a more intensive use or not. She advised that the property is nonconforming to a lot of the requirements. She confirmed that this is not just a nonconforming use of the structure but a nonconforming structure as well. She reiterated that the Z.B.A. needed to determine if the proposed use is a more intensive use. She reminded the Z.B.A. that the Zoning Ordinance does not allow a nonconforming use to change to a more nonconforming use, as in a more intensive use of the property.

Mr. Bartosh stated that the Fire Marshal was requiring the existing building to be brought up to code.

Mrs. Zeitler confirmed that the Fire Marshal is one of the departments who would have to approve the site plan, and Fire is also requiring that the property tie onto County water.

Attorney McNally advised the Z.B.A. that they are granting a variance to the normal zoning. He explained that if the existing building was not brought up to code that a new structure for this use could be constructed on site with this variance approval.

Chairman Beckwith asked if the new structure would have to meet all applicable ordinances.

Attorney McNally replied yes, except for what requirements the Z.B.A. varied. He explained that normally a one (1) acre tract would be required to locate a commercial endeavor, and that an approval of this request by the Z.B.A. would permit a nonconforming use on a half acre nonconforming lot size. He stated that if the existing building could not meet fire codes then it could be torn down and another building constructed on this lot.

Mr. Blanks verified that a new building would still have to meet the parking spaces and all the other requirements.

Attorney McNally replied yes sir.

Ron Mabra remarked that he had no problem with the request.

Mr. Bartosh asked if Mr. Shell owned the property surrounding the subject property.

Mr. Shell replied yes sir.

Mr. Bartosh asked if it would not be a good investment to add property to the .50 acre lot to make it a conforming lot.

Mr. Shell stated that he would love to have half the property fronting Padgett Road and the other half fronting S.R. 85 South and have it zoned commercial.

Mrs. Zeitler explained that the reason the ordinance prohibits the Z.B.A. from allowing a nonconforming use to become a more intensive nonconforming use is because when it gets to that point it is time to make it a conforming lot and to rezone and bring it into compliance with the Zoning Ordinance and Development Regulations. She added that this was the reasoning behind what

the ordinance required.

Mr. Bartosh said that there appeared to be a remedy available without this request.

Mr. Shell remarked that there would not be more traffic generated by the grocery store than there is for the antique shop.

Ms. Sheikh commented that it will only be a small grocery without gasoline sales. She stated she had given a drawing to Mrs. Zeitler with the parking indicated. She said there would be no problem for the parking lot or the Fire Marshal.

Mr. Shell asked why he would have to connect to County water when he had a good well.

Mrs. Zeitler replied that the Fire Marshal required connection to County water for nonresidential uses.

Ms. Sheikh remarked that they could do this too.

Mr. Shell stated that the water line was behind the church.

Mr. Bartosh commented that this is out of the Z.B.A.'s area.

Mr. Shell said he purchased the property in hopes of getting a little income out of it to pay his taxes since he is retired.

Mrs. Zeitler stated she would like to address the traffic. She referenced the comments from the Engineering Department who voiced strong objections to the request. She noted that she had reviewed the Institute of Traffic Engineers publication for the traffic trips generated by the existing use and compared these with the trips from the proposed use, and the traffic was several times greater due to the nature of the use and the hours of operation for the proposed use. She said she strongly disagreed with the comments that the "grocery" store would not increase traffic.

At this time, Chairman Beckwith called for the vote. The motion for approval passed 3-1 with David Bartosh voting in opposition. Tom Mahon was absent.

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Chairman Beckwith asked if there was any further business.

Kathy Zeitler advised that one (1) application had been submitted for the November 18th Public Hearing.

There being no further business, David Bartosh made the motion to adjourn the meeting. Ron Mabra seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent. The meeting adjourned at 8:09 P.M.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

BILL BECKWITH
CHAIRMAN

ROBYN S. WILSON
SECRETARY