

BOARD OF ADJUSTMENT

MINUTES	THURSDAY AUGUST 13, 2009	1:00 PM	COMMISSIONER CHAMBERS, ADMINISTRATION BUILDING
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CALLED TO ORDER BY	Donald Schreiner, Chairman, noted for the record that there was a quorum present. He confirmed Proof of Publication for each case and noted that the meeting had been advertised pursuant to the Sunshine Statute.		
RECORDING SECRETARY	Anna Ely		
BOARD ATTENDEES	Donald Schreiner Marie Wuenschel	Mary Link Bennett Steve Berk	
NOT PRESENT	Ruth Gray Lloyd Atkins, Jr.		
DEPARTMENT OF GROWTH MANAGEMENT REPRESENTATIVES	Terrie Diesbourg, Director, Zoning Division Sheila Short, Senior Planner, Zoning Division Paul Simmons, Planner, Zoning Division Karen Chester, Associate Planner, Zoning Division Anna Ely, Public Hearing Coordinator, Zoning Division		
BOARD ATTORNEY	Melanie Marsh, Deputy County Attorney		
MINUTE APPROVAL	APPROVAL OF MINUTES OF JULY 9, 2009 MEETING		
MOTION READS:	Motion to approve the minutes of the JULY 9, 2009 Board of Adjustment hearing.		
MOTION BY:	MARY LINK BENNETT	SECONDED BY:	STEVE BERK
MOTION APPROVED 4-0	FOR: Donald Schreiner Mary Link Bennett Marie Wuenschel Steve Berk		AGAINST: None

<u>CONSENT AGENDA</u>	BOA #28-09-5 OWNER/APPLICANT: Marjorie D. and Earl W. Gentry, Jr.		
DISCUSSION	There was no objection to BOA#28-09-5 remaining on the consent agenda.		
MOTION READS:	Motion to approve BOA#28-09-5 with conditions of staff.		
MOTION BY:	MARY LINK BENNETT	SECONDED BY:	STEVE BERK
MOTION APPROVED 4-0	FOR: Donald Schreiner Mary Link Bennett Marie Wuenschel Steve Berk		AGAINST: None

<u>BOA# 27-09-5</u>	BOA #27-09-5 OWNER: Francis E. Bass APPLICANT: Laura B. Belflower, PA/Verizon Wireless		
DISCUSSION	Paul Simmons, Planner, presented the staff report and explained the code and the variance request. He showed the aerial from the staff report and explained the size and shape of the parcel and the requested tower's specifications. He pointed out the requested location. He stated that a 100 foot by 150 foot area will be leased for		

the tower site. He also stated that the home located on the parcel will remain in its current location. He showed the site plan from the staff report. He explained that the request is to not place the tower in the center of the parcel. He stated that if the tower was centered it would place the tower closer to surrounding homes.

Mr. Simmons explained the use and zoning of the area surrounding the subject parcel. He stated that the applicant's hardship and intent are included in the staff report and that staff is recommending approval with conditions stated in the staff report. He noted that there have been 13 letters of opposition and no letters of support. He showed an aerial of properties owned by those in opposition (County Exhibit "A") and pointed out that centering the tower would make it closer to the surrounding homes.

Don Schreiner, Board Chairman, asked if there was another location on the same property that would not require a variance and Mr. Simmons told him there was not.

Mr. Schreiner asked the location of the fly-in community and Mr. Simmons showed a large road map (County Exhibit "B") and pointed out the private air strip area and runway. He stated that the runway is a North/South runway which then becomes East/West further into Marion County.

Mr. Berk asked about Federal Aviation Administration (FAA) jurisdiction and Mr. Simmons explained the difference in regulations concerning private runways versus public.

Marie Wuenschel, Board member, asked the distance the requested location was from the required centering location and Mr. Simmons pointed out on the site plan where centering would have placed the tower and also the requested location.

Mr. Simmons showed the aerial exhibit from the staff report. Mr. Berk confirmed that if the tower is centered then they would still need a variance.

Ms. Bennett asked if the applicant had applied for a Conditional Use Permit (CUP) and Mr. Simmons stated that the issue before the Board was whether the tower could be placed in a location other than the center and that the issue as to whether the tower would be allowed on the property would be determined by the Zoning Board and the Board of County Commissioners.

The applicant, Laura Belflower with Verizon Wireless, was present to represent their case. She reiterated that the issue before the Board at this time was the centering request and stated that their request would be going before the Zoning Board also.

Ms. Belflower stated that she believes that there is a legitimate hardship and that the intent of the code will be met by meeting all the other requirements of the code. She stated that there is no clear reason stated in the code as to why towers must be centered but is assumed it is to place the tower at the furthest possible distance from other properties and homes. She explained the configuration of this property actually causes centering to have a greater impact and to be closer to surrounding homes. She stated that by moving it away from

the center actually makes it meet the code requirements to a greater degree. She explained that the existing structure is in the center of the property and that to center the tower would still require a variance to the centering requirements, plus it would not meet the setback requirements from the homes on the surrounding properties.

Ms. Belflower also stated that looking at past tower placements seems to point to this placement request as being the best compliance to the code and that she believes they have a substantial hardship and have met the intent of the code. She stated that she is a land planner as well as an attorney and submitted her resume and stated that she is acting in both capacities (Applicant Exhibit "A").

Ms. Wuenschel pointed out another property in the area and asked why it was not chosen and Ms. Belflower stated that they had contacted the owner, but that they were not interested in having a tower on their property.

Mr. Schreiner asked whether they could co-locate on one of the existing towers in the area and Ms. Belflower explained that those towers are too close to other Verizon towers and are also outside of the search criteria area for the area needing coverage. She stated that there are no towers within the search criteria area and that they have gone as far outside the search criteria area as possible and can not go any further out.

Ms. Wuenschel asked about the coverage area of the requested tower and Ms. Belflower stated that it would be approximately one to one and a half miles and explained that the tower placement is to provide coverage to Harbor Hills Subdivision and the eastern portion of Lady Lake.

Ms. Bennett stated that the plan looks like one tower and three additional pads for support and Ms. Belflower clarified that there would only be one tower and that all antennas would be located on that tower.

Ms. Bennett asked about radio frequency issues.

Melanie Marsh, Deputy County Attorney, reminded the Board that they cannot consider emissions according to Federal Law.

Ms. Belflower stated that anyone co-locating on the tower would have to meet Federal regulations.

Ms. Wuenschel asked about access to the site and the amount of traffic it would generate. She also inquired regarding the amount of noise the generators would make.

Ms. Belflower stated that access to the site would be off Gray's Airport Road and they will be using the same access to the parcel as the current occupants. She explained that the tower would only require one or two visits to the site per carrier, per month. She stated that the generator would only run in the case of emergencies and that the once monthly testing is done only during the day.

Ms. Marsh reminded the Board that they are only discussing hardship and intent with regards to the variance request and cannot discuss

emissions per Federal Law. She also stated that an order must be written if the variance request is denied and that reason must be stated in the motion.

Vickie Zaneis, adjacent property owner, was present to speak regarding the case. She stated that she is a member of Lake County's Local Planning Agency and serves on the Housing Advisory Committee. She stated that she has a passion for Lake County and follows Lake County events closely.

Ms. Zaneis described her property as a farm and stated that she considers it a reserve. She stated that they have horses and trees and that the land is in a healing process to become what it is meant to be. She stated that her home is on a hillside and the tower, if approved, would become a dominating factor in the area and would ruin her view of the setting sun and night sky. She stated that the tower would devalue their property and that it would interfere with the fly-in community of Love's Landing. She explained that the area is made up of large lots with livestock and she didn't think a tower should be located in a rural protection area as described in the proposed Lake County Comprehensive Plan. She stated that there are active gopher tortoise burrows along the ingress and egress shown on the site plan. She also asked why is there another easement shown on the plan if they are going to use existing easement. She stated that in 2005 a request for a 100 foot cell tower was denied just south of Gray's Airport Road. She stated that she felt that just because the property can not comply with all regulations does not imply that it should be given a variance. She passed out a copy of the proposed Comprehensive Plan (Opposition Exhibit "A") showing the proposed land use.

Simon Gruut, adjacent property owner, stated that he lives approximately one mile from the site and he is concerned about his bees. He stated that bees are becoming disoriented lately and that it is thought to possibly be caused by towers. He stated that he would lose his livelihood if that should happen.

Leslie Kalwara, adjacent property owner, stated that her property is located north of the subject property and that she has concerns regarding health issues even though she knows the Board can not address it. She stated that she believed that if Harbor Hills wants better cell phone coverage they should put the tower in their own backyards.

Denis Wilson, adjacent property owner, stated he lives on Gray's Airport Road just across the street to the west. He stated it was interesting hearing about hardship. He stated that while the tower will be a good thing for Verizon and for Mr. Bass and that he thinks telecommunication is good for the community, however, this request comes at the neighbors' expense. He stated that weighing the rights of the many against the rights of the few is always hard.

Mr. Wilson stated that he has a friend on Marion County Road across from Cottom Farm that would love to have a cell tower on his property and that he felt that it would be a better location as it is a much more rural area. He stated that camouflage was an interesting word and felt that nothing could camouflage a 180 foot tower.

Charles Mosely, of Love's Landing, stated that he represented 186 fellow aviators from Love's Landing, and other local fly-in communities. He stated that the location of the tower is approximately 1.1 miles from the south end of the runway at Love's Landing and approximately 30% off centerline. He stated that as a group they generally object to towers within the area of landing runways. He stated that once the airplanes are established into their final approach they are at 400 feet. He stated that if there should be an emergency, then the tower would become an issue and he felt the area should remain rural.

Jon Pospisol, adjacent property owner, pointed out his property on the aerial. He passed out information to the Board (Opposition Exhibit "B") and stated that with that large of a tower it would be like having it just four houses down the road. He stated that he felt there is a loophole in the code that allows for down zoning from Rural Residential to Agricultural; that the owner of the subject property down zoned his property five years ago and by doing so it made this variance request possible. He spoke regarding the setbacks and centering requirements and talked about demonstrating the intent of the code.

Ms. Wuenschel asked Mr. Pospisol about his property and he stated that he bought the land in 1985 with plans to subdivide it and that until the land market had fallen apart he was actively pursuing that.

Gary Cooney, Attorney for Mr. and Ms. Zaneis, was present to speak on their behalf. He stated that as the Board has already heard from his client that he just had a couple of things to point out. He stated that he did not feel that the applicant has a hardship. He stated that he feels that Mr. Bass or Verizon's circumstances do not warrant a fairness issue. He felt that they should select a parcel sufficient in size to accommodate the tower. He stated that they had not selected a proper parcel and the placement of a tower would be at the expense of his client and other surrounding property owners. He stated that according to the Land Development Regulations, a property has to be zoned properly to request a variance and since the property is not yet zoned correctly for the tower that they are going about the process backwards. He raised questions regarding County requirements for airports, and stated that he had not heard any testimony as to whether the tower request met the County's regulations. He stated to center the tower would require it to be placed in the center of a structure and as that structure is already there it makes it an owner created hardship. He stated that Mr. Pospisol's report stated it well; that the owner has a lot of cake and now he wants to put some icing on it as well. He felt the request was favoring the neighbors to the north while hurting those to the south and east and that the applicant has selected the wrong piece of property.

Mr. Pospisol stated that if the tower met the centering requirements it would allow a 100 to 105 foot tower and they are asking for a 100% variance to that height. He made an analogy as to the size of a store and required parking.

John Love with Love's Landing was present to speak. He stated that the area is very unique and beautiful with rolling hills. He stated that his father first bought into the area in the 1950's. He stated that when they developed Love's Landing there was no opposition and that in the last 25 years they have tried to be good neighbors and have only had

a handful of complaints or issues to address. He stated that a tower this tall is a little bit too close to their flight pattern for them to be comfortable. He stated that whenever you give exceptions to a code you should take into consideration the neighbors. He stated that putting the tower in the requested location makes it a little bit less unsafe than centering would be, but that doesn't mean it is safe. He felt for the tower to be safe it should be lighted but lighting it would not be a nice thing to do to other neighbors.

Ms. Belflower stated that she wanted to focus on the variance request and not as to whether the tower should be or not be there. She stated that the tower will not be lighted as it is not tall enough and not close enough to the airstrip to require lighting. She stated that a gopher study has been done and there would be no impact to the gopher tortoises. She explained that the easement to the east is for power and ingress and egress. She stated that there had been a good deal of discussion regarding the impact of cell towers on property values and that there is a decade of information that states that cell towers do not have a material impact on property values. She stated that resale values are not impacted by towers and that centering the tower would have more impact on the houses than not centering. She stated that the neighbor to the southwest is not in opposition. She stated that she felt that the lack of opposition from the property owners that are closer to the subject property is a silent statement that they are not in opposition to it. She stated that the flaw to centering the tower on this parcel is the shape of the property. She stated that in this instance centering would not serve the purposes of the code. She addressed the statement made by Mr. Cooney that the property owner created his own hardship. She explained that Mr. Bass did not actively pursue the tower and the building was there before Verizon made its offer. She stated that this property has a unique shape that affects centering the tower, and that is what is taken into consideration when granting variances. She stated that a 105 foot tall tower would not begin to provide coverage to the area and would require even more towers to be built in the area. It also would not allow for collocation and other companies would need to build their own towers. She stated that moving the tower away from the existing residences is what requires this location to need a variance.

Mr. Cooney asked Ms. Belflower about her statement that the person's most affected have not objected. She corrected her statement to be that the property owners of the three houses that are closer to the center location have not objected. Mr. Cooney stated that those property owners are not the people most affected by the variance request; they are the ones most affected by centering the tower.

Mr. Cooney stated that the purpose of the centering in the code is to insure that you impact surrounding properties equally without choosing to impact one neighbor over the other.

Mr. Schreiner returned it to the Board.

MOTION READS:	TO DENY BOA#27-09-5 as the applicant had not shown proof of hardship.		
MOTION BY:	STEVE BERK	SECONDED BY:	MARY LINK BENNETT
MOTION APPROVED 4-0	FOR: Donald Schreiner Mary Link Bennett		AGAINST: None

	Marie Wuenschel Steve Berk		
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Terrie Diesbourg stated that the Board of County Commissioners has been looking at the budget and that effective October 1st there will no longer be stipends for committee members.

The meeting was adjourned at 2.38 p.m.

Respectfully submitted.

Anna Ely, Recording Secretary

Donald Schreiner, Chairman