

MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
November 12, 2015

The Lake County Board of Adjustment met on November 12, 2015 in the Commission Chambers on the second floor of the County Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Donald Schreiner, Chairman
Craig Covington, Vice-Chairman
Catherine Hanson
Marie Wuenschel

Board Members Absent:

Lloyd M. Atkins, Jr.
Phyllis Luck

Staff Present:

Tim McClendon, Chief Planner, Planning & Zoning Division
Michele Janiszewski, Planner, Planning & Zoning Division
Christine Rice, Planner, Planning & Zoning Division
Diana Johnson, Assistant County Attorney
Donna Bohrer, Public Hearing Associate, Planning & Zoning Division

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed Proof of Publication for the case as shown on the screen. He added that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter to finalize their paperwork.

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Opening Remarks

Tim McClendon noted that there were no changes or additions to the agenda.

Minutes

MOTION by Craig Covington, SECONDED by Marie Wuenschel to APPROVE the October 8, 2015 Board of Adjustment Public Hearing Minutes, as submitted.

FOR: Schreiner, Covington, Hanson, Wuenschel
ABSENT: Atkins, Luck
AGAINST: None
MOTION CARRIED: 4-0

Public Comment

Chairman Schreiner asked if there was anyone in the audience that wished to address agenda item 1-3.
There were no public comments.

Regular Agenda

Motion by Craig Covington, SECONDED by Catherine Hanson, to approve the consent agenda consisting of VAR-15-16-1, VAR 15-18-4 and VAR 15-19-1, with conditions as set forth in the development order.

FOR: Schreiner, Covington, Hanson, Luck
ABSENT: Atkins, Wuenschel
AGAINST: None
MOTION CARRIED: 4-0

VAR-15-10-2

OWNER/APPLICANTS:

Daniel & Melissa Legg

Tab 4

Chairman Schreiner noted that he had received had several speaker cards.

Michele Janiszewski, Planner, discussed the tower regulations within the Clermont Joint Planning Area (JPA). She noted that the applicant was requesting a variance for an off-center, camouflaged, 195 foot cell tower. The Clermont JPA requirements state that cell towers shall only have a maximum height of 140 feet; they must be camouflaged and be located at least 3,000 feet from the closest existing cell tower.

The City of Clermont Council reviewed this application and recommended approval of a 199 foot tower. Staff has reviewed the request and finds it is consistent with JPA, and Land Development Regulations (LDRs). If the Board should approve this variance, staff recommends including one of three special conditions related to camouflaging.

There was some discussion regarding the maps showing cell phone coverage areas, Ms. Janiszewski noted the different areas were delineated by color.

Diana Johnson, Assistant County Attorney, said this request for a cell tower, was subject to the Federal Telecommunication Act of 1996. She said that the Board's decision should be provided in writing and must be supported by substantial evidence.

Cecelia Bonifay, Akerman, LLP, said she was representing the applicant, Skyway Tower, that was working with Verizon on the application. She said a 140' tower was too low to meet the applicant's goals. She noted that all of the data was based on either 175 or 195 foot tower plus the footage required for a lightning rod.

She said the City of Clermont held a publicly advertised meeting and the council approved the application. She said the property owners were available to answer questions. Ms. Bonifay said the variance is being requested only because they would like to locate the tower off center. They were planning on building a tower camouflaged as a pine tree, adding that this location meets the distance from the nearby residences.

Ms. Bonifay presented signed petitions supporting the application. There was discussion regarding the coverage in this area provided by other cell phone carriers.

She noted that cell towers are subject to the Federal Telecommunications Act and the Federal Communication Commission (FCC) sets standards for all cell towers. She explained that the Board can't consider environmental or health concerns related to cell towers because of the FCC regulation. She presented a Wall Street Journal article showing the lack of cell tower coverage could be more detrimental to property values than the actual presence of towers.

Ms. Bonifay said the request to have the tower located off center was to maximize distance from nearby residences and to increase coverage.

In response to Marie Wuenschel's question regarding due diligence, Ms. Bonifay thought some of the comments regarding due diligence had arisen from property owners that would have liked the telecommunications tower located on their property. She said Verizon had done due diligence, concluding that the Legg property was the best location for their cell tower.

Ms. Wuenschel reading from the opposition letter from Daniel White said 'this location is in a valley if located on a different site, perhaps the tower wouldn't have to be so tall.' Ms. Bonifay noted that Verizon was going to choose the best location for their project.

Mr. Schreiner noted that most issues discussed so far are not pertinent to this application.

PUBLIC COMMENT

Jonathan and Angela Reddish said their residence was closer to the tower than the applicant's home. He said he would never have allowed a tower on their property and they had rescinded the easement. Angela Reddish said she remained concerned about possible health concerns. Mr. Reddish discussed the multiple cell towers in the general area and said his Verizon coverage was excellent with the existing towers. Ms. Reddish said the proposed tower would be far taller than the surrounding pines. Mr. Reddish added that none of the nearby residents were invited or knew of the Clermont council meeting.

There was discussion regarding the potential for a tower collapse to affect nearby property owners and the possibility the tower height would collapse outside the designated property. Chairman Schreiner noted that monopoles are engineered to collapse within themselves.

Daniel White, noted that he had provided written comments to the Board. He said their area currently has good cell phone coverage. He was concerned about potential damage to their privately maintained road during tower construction. He thought the tower could be located in the sand mine area, instead of their front yard. He had compared elevations in the area and said the proposed site is in a valley. He hates the idea of a cell tower in his front yard. He said there was a willing landowner further down the road, which would be a better location, than in the middle of their neighborhood. He disputed the idea that the towers collapse within themselves. He said there was another tower within 1.5 miles. He suggested the applicator improve the privately maintained road, with gravel, culverts and ditches.

Steven Long showed pictures of their neighborhood with a PowerPoint presentation. He explained how residents value the scenic views they have from their homes. He included a pictorial representation of how a tower would actually look when built. He believed there were other more suitable properties. He provided the Board with copies of a study showing that cell towers adversely affect the property value of nearby residences. Mr. Long also presented a photograph

of cell tower that did not collapse within, but fell over. He said this might be the best location for the applicant, but he didn't believe they had shown evidence of substantial hardship.

Cleveland Lee said he had recently learned about the application and originally came to get information. However, now the pictures have made him angry. The proposed tower will be directly outside his front door. He believe there were other suitable locations for the tower. He was concerned about damage to their privately maintained road.

Jason Limpus said his home is the closest, located only 268 feet from the tower. He was concerned about possible construction accidents and how the tower would be maintained. He disputed the tower distances provided by the applicant. He didn't receive any notices regarding the Clermont meeting. He doesn't support the application at all, suggested putting it on the sand mine property.

Robert Meijer said he was another nearby resident. He noted that although this was a rural area, it was still a neighborhood. He thought other locations would work, ones that weren't in a neighborhood. He remained concerned over possible health issues. He said they presently have excellent coverage from Verizon. He thought the applicant was only looking only for a prime location with lower costs. He said the applicant was concerned about money and he just wants to enjoy their property. He discussed a survey regarding how potential buyers would feel about purchasing properties located near a cell phone tower. He believed inaccurate information had been provided regarding the distance to the closest towers. He said this was a quality of life issue for their neighborhood.

David Johnson lives on property that backs up to the sand mine and said he would prefer the cell tower to be located by the sand mine.

Danny Legg, property owner, said he wanted to talk about property value. He said that the local businesses in their neighborhood don't add to their property values.

Ms. Bonifay addressed the issues raised by residents, adding that the only consideration before the Board was if the tower could be to be located off center on the lot. She said the towers are engineered to self-collapse they do not fall over like a tree. She noted that only Clermont residents were notified of the city council meetings and the city was only consulted because of the JPA. She said one of the studies quoted was done in New Zealand in 2005, not done in the U.S. She discussed the federal regulations regarding cell towers. She said the applicant was willing to reduce the height to 175 feet. She said Verizon had done due diligence and that this location best met their needs. She said the applicant is willing to do road maintenance, scraping, gravel, as included in the plan, as they must be able to access the site.

There was brief discussion related to towers being engineered to collapse within and not fall over. Ms. Janiszewski responded to a question about the road maintenance issue by explaining it would be addressed during the site plan approval process.

Ms. Johnson clarified, that the JPA does requires the tower to be camouflaged, the reasons why staff gave you options to not require camouflaging is because the City of Clermont had requested the tower not be camouflaged, at least not as a flag pole.

Mr. Covington was concerned that there were other locations that would not require a variance for the 140 foot requirement.

Ms. Bonifay said a 140 foot cell tower will not meet Verizon needs. She added that the sand mine was not part of Verizon's study area. Verizon needs a 175 foot tower.

Motion by Marie Wuenschel to deny VAR 15-10-1 to allow an off-center tower exceeding 140 feet located within the Clermont JPA.

Mr. Covington asked if they needed more of a reason.

Ms. Johnson generally quoted from the FCC telecommunications act, Section 704. Stating there are limitations on the placement, construction and modification personal wireless service facilities by any state local government or instrumentality thereof. Number 1 shall not unreasonably discriminate between among providers of functionally equivalent service. Number 2 shall not or have the effect of prohibiting the provision of personal wireless service, state or local government or instrumentality thereof shall act on any request for authorization to place construct or modify personal wireless service facilities to in a reasonable period of time, after the request is duly filed with such government or instrumentality taking into account the decision to the nature and scope of the request. Any decision by the state or local government to place construct or place or modify personal wireless services facilities shall be in writing and shall be supported by substantial evidence contained in the written record. No state or local government of instrumentality thereof may regulate the placement, construction and modification of personal wireless facility service on the basis of environmental effect of the radio frequency emission to the extent that such facilities comply with commission's regulations regarding such emissions, all that being said.

Ms. Johnson said if the Board does a denial it must be supported by substantial evidence. She said substantial evidence can vary with the court; however, there is valid case law stating that generalized concerns about the esthetics and property values is not substantial evidence. The Board should take more than mere opposition into consideration when making their decision.

Motion Amended by Marie Wuenschel stating that the tower could not be off centered on the site, Seconded by Craig Covington.

Chairman Schreiner stated his opinion that the tower does not need to exceed the LDR height requirement of 140 feet.

Ms. Johnson explained that cell towers are permitted in this area, the variance they are seeking is to build off center. A cell tower can still be built in this area.

In response to a question regarding the sufficiency of the motion from Chairman Schreiner. Ms. Johnson said the motion as it stands is correct. She said she couldn't give the Board advice on the how or what of the basis of the Board's decision. She suggest it be made as clear as possible, so it can be put in writing.

Chairman Schreiner asked if there was any discussion on the motion.

Ms. Hanson said she would not support the motion, her concerns about road maintenance had been addressed.

Mr. Covington remained concerned about the tower falling over and not collapsing within as engineered.

FOR: Schreiner, Covington, Wuenschel

ABSENT: Atkins, Luck

AGAINST: Hanson

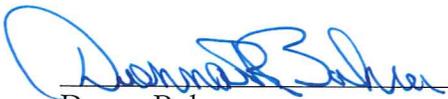
MOTION CARRIED: 3-1

Chairman Schreiner said let the record show that the motion passed 3-1 and the application has been denied.

Adjournment

There being no further business, the meeting was adjourned at 2:00 p.m.

Respectfully submitted,



Donna Bohrer
Public Hearing Associate



Donald Schreiner
Chairman



Published Daily
ORANGE County, Florida

STATE OF FLORIDA

COUNTY OF LAKE

Before the undersigned authority personally appeared **Jean M. Gailie / Brian Hall**, who on oath says that he/ she is an Advertising Representative of the ORLANDO SENTINEL, a DAILY newspaper published in ORANGE County, Florida; that the attached copy of advertisement, being a Legal Notice in the matter of **November 12, 2015 @ 1PM** in LAKE County Florida, was published in said newspaper in the issues **10/29/15**

Affiant further says that the said ORLANDO SENTINEL is a newspaper published in said ORANGE County, Florida, and that the said newspaper has heretofore been continuously published in said ORANGE County, Florida, each day and has been entered as periodicals matter at the post office in ORANGE County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Brian Hall

Printed Name of Affiant

[Signature]

Signature of Affiant

Sworn to and subscribed before me on this **29** day of **October, 2015** by above said affiant, who is personally known to me (X) or who has produced identification ().

[Signature]

Signature of Notary Public (Typed, Printed or Stamped)



Ad No. 3695247

LEGAL NOTICE NOTICE OF QUASI-JUDICIAL
The Lake County Board of Adjustment will hold a public hearing at 1:00 p.m., on Thursday, November 12, 2015 in the County Commission Chambers, Second Floor, County Administration Building, 315 West Main Street, Tavares, Florida, to consider variance requests and any other petitions which may be submitted in accordance with Section 14.15.00 of the Lake County Land Development Regulations, as amended.

All interested citizens are welcome to attend. Please call our office (352-343-7641) three days prior to the meeting to ensure the case has not been postponed. Persons with disabilities needing assistance to participate in any of these proceedings should contact (352) 343-9760, 48 hours in advance of the scheduled meeting.

Pursuant to the provisions of Chapter 286, Florida Statutes, Section 286.0105, if a person decides to appeal any decision made by the Board they will need a record of the proceedings and they may need to ensure that a verbatim record of the proceedings is made, which record may include the testimony and evidence upon which the appeal is to be based. All oral and written communications between Board members and the public concerning a case are prohibited by the Florida Law unless made at the public hearing on the case.

CASE NO.: VAR-15-18-4
OWNER/APPLICANT: Suzanne Rufrano

REQUESTED ACTION: A variance from Lake County Land Development Regulation Section 6.01.04(A)(1) to allow the construction of pool and screen room 8.38 feet from the canal bank/seawall in lieu of fifty (50) feet.
GENERAL LOCATION: Leesburg area, 35550 Quail Run

CASE NO.: VAR-15-19-1
OWNER/APPLICANT: Noah Beckett
REQUESTED ACTION: Variances from Lake County Land Development Regulations as follows: Section 10.01.03(B)(1) to allow an accessory dwelling unit on a property less than one acre in size and 3.01.02(A)(1)(c) to allow an accessory dwelling unit under 23 feet, 4 inches of its narrowest point.
GENERAL LOCATION: Groveland area, 7343 Gano Road

CASE NO.: VAR-15-10-2
OWNER/APPLICANT: Daniel & Melissa Legg
REQUESTED ACTION: Variances from Lake County Land Development Regulations as follows: Section 3.13.09(B)(1) to allow a communication tower to be off-centered on a parcel and Section 15.02.04 (J) to allow an uncamouflaged monopole tower 199 feet in height in lieu of 140 feet when located within the Clermont JPA (Note: City of Clermont has sent a letter of support for the application).
GENERAL LOCATION: Clermont area, 10738 Foxhole Road

CASE NO.: VAR-15-16-1
OWNER/APPLICANT: Gary & Nora Gunn
REQUESTED ACTION: Variances from Lake County Land Development Regulations as follows: Section 14.11.01(D)(1) to allow minor lot split on a parcel which had previously been split through the minor lot split process and 14.11.01(D)(2) to allow a minor lot split which will create a lot that will not front a publically maintained paved road.
GENERAL LOCATION: Groveland area, 3713 Odom Lane

LAKE COUNTY DEPARTMENT OF ECONOMIC GROWTH
DIVISION OF PLANNING & ZONING
315 WEST MAIN STREET
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10/29/15

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