

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on March 25, 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
Tom Mahon
Ron Mabra
Larry Blanks

MEMBERS ABSENT: None

STAFF PRESENT: Kathy Zeitler, Director of Zoning/Zoning Administrator
Bill McNally, County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

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. Election of a Chairman for 2002.

Tom Mahon nominated Bill Beckwith as Chairman. David Bartosh seconded the motion.

Larry Blanks made the motion to close the floor for nominations. Tom Mahon seconded the motion.

The motion to elect Bill Beckwith as Chairman for 2002 was passed 4-0-1 with Bill Beckwith abstaining from the vote.

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2. Election of a Vice-Chairman for 2002.

Larry Blanks nominated David Bartosh as Vice-Chairman. Ron Mabra seconded the motion.

Tom Mahon made the motion to close the floor for nominations. Ron Mabra seconded the motion.

The motion to elect David Bartosh as Vice-Chairman for 2002 was passed 4-0-1 with David Bartosh abstaining from the vote.

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3. Election of a Secretary for 2002.

Tom Mahon nominated Robyn Wilson as Secretary. Bill Beckwith seconded the motion.

Larry Blanks made the motion to close the floor for nominations. Bill Beckwith seconded the motion.

The motion to elect Robyn Wilson as Secretary for 2002 was unanimously passed 5-0.

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4. **Consideration of the Minutes of the meeting held on December 17, 2001.**

David Bartosh made the motion to approve the Minutes as circulated. Larry Blanks seconded the motion. The motion unanimously passed 5-0.

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Kathy Zeitler read the procedures that would be followed including the fifteen (15) minute time limitation for presentation and opposition for petitions.

5. **Consideration of Petition No. A-518-02, Grid Towers, LLC, Owners, and U.S. Broadcasting/ American Towers, Inc., Agent, request a 25 foot Variance to exceed the 500 foot maximum height allowed for a communications tower, by increasing an existing communications tower from 500 feet (490 foot tower structure plus a 10 foot lightning rod) to 525 feet (515 feet plus a 10 foot lightning rod). This property is located in Land Lots 84 and 109 of the 7th District, fronts on Swanson Road, and is zoned A-R.**

Hugh Durham, agent for U.S. Broadcasting/American Towers, requested a 25 foot variance to an existing 500 foot tower. He explained that WHTA currently transmits from a 490 foot tower located on Swanson Road in Tyrone. He pointed out that its antennas are currently positioned at a height of 430 feet on the tower. In order to minimize interference, he said the antennas need to be positioned 85 feet higher at a height of 515 feet. He stated that this would benefit two-fold: 1) it will allow them to reduce the power output necessary for the coverage required by the F.C.C. licensing and 2) it will eliminate the re-energizing from the signal itself. He confirmed that WHTA currently operates in compliance with all applicable local, state, and federal licensing requirements and regulations. He added that WHTA seeks to be a good neighbor by eliminating the interference issues and has extended considerable resources toward that end.

Mr. Durham addressed the six (6) criteria for approval of a variance as follows:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography; and,

DeKalb County vs. Wapensky, Georgia law is clear that the granting of a variance should be based on the property as a whole and not just the unique aspects of the land. The extraordinary and exceptional condition pertaining to this particular property is the fact that a 490 foot tower is located on the property. The applicant needs to move its antennas higher up on the tower to avoid the interference problems which are currently existing in the surrounding areas.

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,

The applicant and the community will suffer unnecessary hardships if this variance is denied. WHTA's only alternative will be to deal with the interference on a case by case basis or to construct a new broadcast tower somewhere in the surrounding area of the County.

3. Such conditions are peculiar to the particular piece of property involved; and,

The conditions at issue - the existence of a radio tower on the subject property - is inherently unique to this property.

4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and,

In fact, relief if granted, would substantially benefit the public good. The variance will allow the applicant to minimize interference experienced by the surrounding communities.

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed; and,

A literal interpretation of the ordinance would deprive the applicant of its right to broadcast signal that is free from interference. The only way for the applicant to avoid interference is to position its antennas higher on the tower. The only way to position its antennas higher on the tower is to extend the height of the tower. Thus, the height variance must be approved.

6. Provided that the Board may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhoods; and provided that wherever the Board shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions, or restrictions upon which such permit was granted are not being complied with, said Board shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a hearing. In exercising the above powers, the Board shall not consider any nonconforming use of neighboring lands, structures or buildings in the same District, and no permitted use of lands, structures or buildings in other districts as grounds for the issuance of a Variance.

In summary, all conditions of Section 9-6.,B. exist. Therefore, approval of the application is requested.

Attorney Thomas Anderson presented handouts to the P.C. and Staff. He explained that he represented American Towers and the applicant in this request. He said that he would be addressing both Georgia legal issues and Federal legal issues.

In regard to Georgia law, Attorney Anderson advised that denial of the variance will violate the due process and the protection provisions of both the Georgia and the United States Constitution. He stated that this was not said as a threat, but as a predicate to further legal relief if necessary. He stated that the more pressing issue is the set of F.C.C. guidelines which dictate the compliance by the radio station regarding radio frequency interference (R.F.I.). He remarked that there are a considerable number of residents suffering interference with their devices, including the nearby schools. He stressed that rules which dictate and govern radio compliance regarding these complaints are very specific. He commented that they suggest that this variance be approved because these requirements are very specific in the kinds of devices that the radio station is obligated to satisfy and address. He added that testimonial would be provided about what the radio station has done to date to attempt to elevate these interference complaints on a case by case basis. He noted that the variance request is the best, most certain, and most sweeping measure which can be taken to cure the interference problem. He went on to say that there is no other secondary or hidden goal behind requesting the height increase other than to eliminate this interference.

Attorney Anderson advised that the devices which Radio One is required to address and attempt to satisfy from the interference perspective are those devices which generally have antennas. He noted that this does not include walk-around phones or mobile telephones, other kinds of speakers without antennas such as computer speakers, or no other device which does not have an antenna. He said that by raising the antennas from 430 feet to 515 feet will not just eliminate the interference on those devices that Radio One is obligated to satisfy, but will eliminate the interference on all of the devices or reduce the interference to a manageable few. He pointed out that the alternative to the variance would be to address all of these devices on a case by case basis. He went on to say that Radio One would begin with those devices which the F.C.C. mandates and the devices not mandated by the F.C.C. will fall to the back of the list. He stressed that this is where the request for the variance is justified. He reported that by relocating the antennas higher it would allow most if not all of the R.F.I. concerns of the community and the schools.

Consulting Engineer Bob du Treil of du Treil, Lundin & Rackley, Inc. stated he had been doing consulting work with U.S. Broadcasting for a number of years. He said that his experience expands approximately 40 years. He commented that he participated in the design for this station, and believed that when an antenna is located on a tower where there is a very complex environment, that the antenna is sometimes affected in adverse ways. He remarked that under normal circumstances this antenna should not be causing any interference. He added that there is some mechanism in this complex environment which caused the interference problem. He confirmed that tests were made prior to the placement of the antenna to show that it would operate properly. He went on to say that if the antenna could be elevated and placed in an environment which is cleaner and there are no other antennas and transmissions lines, nothing to disturb the pattern of this antenna, the interference problem should disappear entirely.

Mr. De Treil explained that by increasing the height there are two (2) factors: reduce the power with the increased height to maintain safe coverage which is an F.C.C. requirement, but the height is extremely important because the power density on the ground has a square function, so that every foot up was the benefit of a square function, so it really does help to get the height. He added that moving the antenna to a higher elevation will clean up the problem.

Vic Jester, Chief Engineer for Radio One, advised that testing had been performed to verify that the results could actually be done in the field. He confirmed that power was reduced temporarily for two (2) minutes at a time to see what effect it would have in the homes of the people who are having interference problems. He noted that this did elevate most of the interference problems. He further advised that testing was also performed in the three (3) nearby schools but it did not have as much effect in the schools as the nearby homes. He reported that this proved the theory that by reducing the power the interference will be reduced drastically, but it will not completely eliminate the interference without the increase in height and placing the antenna on a section of tower that does not have as many transmission lines or as many other antennas on it as does the proposed section of tower. He said that this particular antenna is mounted in the best location it could be mounted in for the given limitations of this particular tower. He went on to say that it was modeled on a test range in Indiana and did the best testing prior to installation but it still has problems. He requested approval of the variance which is the very best option and they had looked into many, many different options.

Chairman Beckwith asked if there was anyone to speak in favor of the petition and asked those to stand in order to get a count.

Mark Trail, 130 Roscommon Court, requested relief from the interference. He said he was getting interference on smaller radios and the television. He stated that he could not turn off the devices but had to unplug them which is not a particularly pleasing alternative. He commented that he had a conversation with these gentlemen and he believed it is worth a try to raise the antenna and lower the power. He added that a number of property owners were troubled by this, particularly those with smaller children because they have to unplug the devices at night to sleep. He said that it was his understanding that the school received interference during the play "Guys and Dolls" over the loud speakers. He stressed that relief is needed.

Chairman Beckwith asked if there was anyone to speak in opposition of the petition and asked those to stand in order to get a count. He asked for a show of hands of those wishing to speak. With three (3) people raising their hands, he gave each a maximum of five (5) minutes each for a total of 15 minutes.

Janet Smola, 310 Pendleton Trail, said she is both a resident and parent of children and a member of the Fayette County Board of Education, who has received countless calls from concerned parents. She stated that she was an elected official charged with safeguarding the children of the community and a parent dealing with this personal interference. She commented that it was important to note that many of her constituents identify this interference as being, in their perception, inappropriate for children as young as kindergarten. She confirmed that the station's content clearly would be regulated at home, but as a school system it was impossible to turn it off. She asked the Z.B.A. to

expedite this issue. She went on to say that she had met with these gentlemen who share the same goals as the school to resolve this issue. She stressed that she was concerned about the dangerous precedent being set by Fayette County to exceed their established limit for the height of the tower. She reported that she met with American Tower representatives but was unable to get an answer with reasonable certainty that raising the tower to 525 feet would solve the problem. She said that she asked if the radio station could trade places with another carrier located at a higher elevation. She stated that she did not get an answer as to whether or not an attempt had been made to do that. She commented that she was told that this resolution would take several months, to approximately July and there are two (2) more months of school left. She stressed that the children need to be relieved of this issue as soon as possible. She expressed concern, when asking questions and requesting reasonable assurance that raising to this height, of how much higher they would have to go to accomplish the same goal without raising the height of the tower. She also expressed concern that the school only received minimal impact from reducing the transmission. She asked if it would be quicker and what would the impact of reviewing devices on a case by case basis versus waiting the 90 days. She asked if the tower would have to be increased even higher if the current request does not work. She also asked what would they do if this does not solve the problem.

Wes Wilkins, 150 Gaelic Way, said he had two (2) daughters who attend Burch Elementary. He stated that he was having radio frequency interference coming over his computer, telephone, and television. He remarked that the broadcast contains "foul mouth" diskjockeys and music with sexual overtones. He commented that he could not allow his daughters on the computer anymore without unplugging the speakers. He went on to say that hundreds of children are being exposed to this. He advised that he has the filtering in his home but it hasn't helped. He noted that grounding the tower has not helped. He advised that they did come out and experiment in his house approximately one (1) week ago. He confirmed that they reduced the wattage to 31 kilowatts and it did make some improvements but no one can guarantee that the rest of the interference can be made to go away. He stressed that he should not experience any interference. He went on to say that aesthetically he had no problem with the tower being raised but no matter what the Z.B.A. decides, everyone wants the radio frequency interference totally resolved even if it means that WHTA has to seek somewhere else to broadcast. He stressed that this is a problem that no one should have to live with and it has been said that we may "have to live with it". He added that this was unacceptable. He further added that schools and homes should be a safe haven for young children and youth. He reported hearing a condom commercial on Saturday at 2:00 P.M. and his children could have been listening. He said that even the adults should not have to listen to the interference.

Sharon Dewberry, 250 Galway Bend, said that she lived directly in front of the tower. She expressed concern about the tower being structurally sound and possibly falling and electrocuting her. She added that she also had young children affected by the interference.

In rebuttal, Mr. Durham said that they had extensively looked into trading user spaces on the tower, in fact, this was the first area of recourse pursued. He advised that there are six (6) existing tenants above the current location of the U.S. Broadcasting antenna. He stated that this would be six (6) long term contracts to be reworked with companies with varying degrees of willingness to do so. He commented that recourse would take a considerable amount of time and negotiation, however there has been no success to date. He emphasized that both U.S. Broadcasting and American Tower were very sympathetic toward the problems being experienced in the community and considerable resources had been taken to clear these problems up. He added that if this became the last recourse it would be pursued, however the time frame would be extensive.

In regard to the structural viability of the tower itself, Mr. Durham said that the Building Department will have to approve any additions to the tower. He stated that their engineers have modeled this addition and it is by far within the safety ranges. He explained that this type of tower would not fall straight down but would fold in on itself. He added that the addition is fully within the ranges of structural capacities of the foundation and the steel itself.

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

Larry Blanks asked if the station was Class A or Class C.

Mr. du Treil replied C2.

Mr. Blanks asked when the frequency search was performed for this station.

Mr. du Treil replied that the frequency had been on the air since the early 60's and was re-licensed and moved in September, 2001. He added that a frequency search had not be performed.

Mr. Blanks said that he had paid for a frequency search for a Class C station approximately 15 years ago and none were available since there can be no over lapse of frequency.

Mr. du Treil remarked that 15 years ago the F.C.C. rules did not allow re-licensing of the existing stations to other locations, however Document 8090 allows for re-classification, re-licensing, and relocation. He advised that this station was previously licensed in Macon, Georgia. He explained that each station has an area where it can locate and meet the separation requirements. He confirmed that this station had a large enough area so it could relocate and still meet all of the requirements as a Class C2. He added that it was very unusual for a station to have such a large range in which it could move around in because most stations are very restricted.

Mr. Blanks asked what type filtering had been used within the transmitter.

Mr. du Treil replied that the harmonics are not the problem but rather the fundamental frequency being too strong and overloading the equipment causing blanketing interference. He explained that the transmitter is designed to limit the admission mask. He pointed out that the RF signal should be within the mask. He said that within a walkman receiver, the set is being overloaded because there is too much signal. He stated that the interference being generated from the higher fields should not be there, and he was unsure as to why they were occurring, other than because of the complex environment. He noted that the signal is fine but the equipment is receiving too much signal and generating internal interference. He added that the station is operating properly within the F.C.C. rules.

Mr. Blanks asked if a high granite content would have anything to do with the problem since there are quarries in the area.

Mr. du Treil replied no.

Chairman Beckwith asked if the antenna was directional or omni-directional.

Mr. du Treil replied that it was omni-directional. He explained that when an antenna is mounted on a structure, the structure itself regenerates some of the energy so it is a directional antenna. He said that this could affect the pattern. He stated that in a sense the antenna is directional, but it is unintentionally directional. He added that you want the signal to emit horizontally.

Mr. Blanks asked when the antenna was mounted on the tower.

Mr. Jester replied September, 2001.

Mr. Blanks asked when the interference began.

Mr. Jester said that they began receiving calls September, 2001.

Mr. Blanks asked how much work was put into relocating the antenna for the past seven (7) months.

Mr. Jester commented that they approached this from the standpoint that there was interference but it was unknown at what level. He said that they started addressing the issues at the device level by installing filters on individual devices and trying to eliminate the problem. He remarked that when

this alone was not sufficient they began to explore options such as relocating the antenna, try another form of filtering, or the best option, increase the height of the tower and relocate the antenna higher, which is the quickest way.

David Bartosh reiterated that the reason for the interference is entirely unknown even with testing. He also reiterated that the tower was existing with multiple users when the radio antenna was installed. He asked if the remedy would be to find another tower rather than to overload the existing tower since it could not handle the radio station properly without being a detriment to the community. He expressed concern about granting the variance which fully exceeds the limitations established by the County since it was not known if this would work, and they only assumed or hoped that it would work, however there are not guarantees.

Mr. du Treil replied that he firmly believed that this would solve most of the problems. He said that they should not have the problem now, and was at a loss as to why the problem was occurring. He added that he did not have the answer and that it was a complex situation. He stated that he had been involved with similar facilities and they did not have this kind of problem.

Mr. Bartosh asked Mr. du Treil as a very knowledgeable engineer if he should admit that this tower is unsuitable for this particular station in this particular area due to the unknowns.

Mr. du Treil commented that this case is not that unusual because antennas are mounted on towers with complex environments, and do not have any problems. He said that this particular tower has some particular problem which has not been identified.

Mr. Bartosh asked if a technicality is allowed to break the law to elevate the tower and it does no good then what is the remedy at that point.

Mr. du Treil replied that he did not care to speculate because he did not think that they would have a problem.

Mr. Bartosh remarked that nothing would be solved by allowing a variance on the tower. He asked what would be done if relocating the antenna does not work.

Mr. du Treil stated that as a person in this field for 40 years that he believed it would work.

Mr. Bartosh asked again what would be done if relocating the antenna did not work.

Mr. du Treil said that they would find a solution.

Mr. Durham stated that they, in general terms, recognized what the issues, the re-radiation and interference issues are which are two-fold. He explained that there was a power output which could be diminished by increasing the antenna height on the tower. He pointed out that a signal coming from the antenna hit other objects such as the steel of the tower itself, or other antennas which made them send a signal. He said that if the height was increased that first they gain decreasing power and get beyond the clutter of antennas.

Again, Mr. Bartosh asked what would be done if this did not work.

Mr. Durham replied that U.S. Broadcasting and American Tower would be glad to do a trial period with approval of the variance for a six (6) month trial period. He said the construction would be done, the antenna mounted, consult with the citizens and if there are issues at certain homes or schools, then an at the source solution would be explored. He stated that after this time if the Z.B.A. does not feel that it has been a successful endeavor then they will pull the addition down, all at their cost. He stressed that they were here tonight to solve the problem.

Mr. Bartosh asked Attorney McNally if this was an option which the Z.B.A. can look at.

Attorney McNally replied that the Z.B.A. should either grant the variance or not grant the variance.

Ron Mabra asked if the antenna was relocated to another tower if the same problems could happen.

Mr. Durham replied that there is one (1) available 500 foot high tower which is 1.2 miles away, however the tower was not structurally capable to handling another antenna.

Chairman Beckwith asked when the antenna could be relocated if the variance was approved.

Mr. Durham stated 45 to 60 days, however they will push and go like "gang busters". He stressed that American Tower has nothing to gain because no other carriers would be located up there.

Mr. Blanks asked how much time the F.C.C. would allow them to resolve the problem if the variance was denied.

Mr. Durham said that they would be required to follow certain steps to correct the problem. He stated that certain types of equipment would fall into the range to be addressed, however some do not. He commented that problems would be addressed case by case by compiling a list of where the interference problems are, what are the problems, rank the problems, and deal with them as they arise. He remarked that the time frame would be on-going and constant.

Attorney Anderson advised that a one (1) year time limit is required from the date of complaint to satisfy the covered devices.

Mr. Bartosh asked what was the radius of the coverage.

Mr. du Treil replied approximately 35 kilometers or 20 miles.

Mr. Bartosh asked if this was a primary tower.

Mr. du Treil advised that this was a single tower.

At this time, Chairman Beckwith called for a motion.

Ron Mabra made a motion to approve the petition. David Bartosh seconded the motion for discussion purposes.

Tom Mahon asked Attorney McNally what was the time limit for compliance should the variance be granted.

Attorney McNally advised that the Z.B.A.'s jurisdiction is to either grant or not grant the variance to increase the height of the tower, not to solve the radio station problems.

Mr. Mahon asked if there were other models or similar occurrences anywhere in the country.

Mr. Jester replied yes. He said that they have raised other antennas and had success.

Mr. Mahon commented that the goal is to provide relief to the homeowners as quickly as possible. He remarked that they said that they could resolve the problem in 45 to 60 days, their goal is to satisfy the citizens, and if the height increase did not work that the addition to the tower would be removed, and the F.C.C. allowed them one (1) year to remedy the problem.

Mr. Bartosh stressed that Attorney McNally had made it clear that approval cannot be conditional. He said that they are not bound to remove the addition if the problem is not solved. He noted that he had not heard anything to guarantee that the problem would be solved or even help the problem.

Chairman Beckwith stated that this was an opportunity to do something positive for the neighborhood. He said the tower company had made an effort and are willing to try to resolve the problem. He added that they should be given a chance and that he supported the motion.

Mr. Blanks remarked that he concurred with Mr. Bartosh in that no guarantees had been made. He referenced a letter dated March 20, 2002 to Commissioner VanLandingham from Victor Jester which basically stated that this was the quickest remedy, and that anything else would take a lot longer. He said it was almost like "either you grant the variance or we are going to take a lot longer to get something done". He pointed out that they had been working on the problem for the past seven (7) months, but he felt that enough work had not been put into resolving the problem.

At this time, Chairman Beckwith called for the vote.

The motion passed 3-2 with David Bartosh and Larry Blanks voting in opposition.

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Chairman Beckwith called for a break at 8:15 P.M. He reconvened the meeting at 8:25 P.M.

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6. **Consideration of Petition No. A-519-02, Wayne Dalland, Owner/Agent, request an 8.4 foot Variance to reduce the front yard setback from a minimum of 50 feet to a minimum of 41.6 feet to allow an encroachment of the existing single-family dwelling to remain. This property is located in Land Lot 38 of the 5th District, fronts Greenfield Circle and Seay Road, and is zoned R-40.**

Wayne Dalland advised that he was planning an addition to his house and had a survey of his property prepared in February. He confirmed that he discovered the front yard encroachment along Seay Road at that time. He pointed out that his house is located on a corner lot and the setback from Seay Road is 50 feet, however his house is currently 41.6 feet. He said he was unsure about what to do when he discovered the encroachment so he went to the Zoning Department and the Staff advised him that he needed to request a 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 of the petition. Hearing none and with no rebuttal, he closed the floor from public comments.

Larry Blanks made the motion to approve the petition. Tom Mahon seconded the motion.

Chairman Beckwith asked Attorney McNally if the variance was approved if the proposed addition would be required to meet the current 50 foot setback or the existing 41.6 foot setback.

Attorney McNally replied that if the variance was approved that the front yard setback would change from 50 feet to the 41.6 feet established by the approval of the variance.

Mr. Blanks asked if the subject property was not a double frontage lot would Mr. Dalland be requesting a variance.

Mrs. Zeitler indicated no.

At this time, Chairman Beckwith called for the vote.

The motion unanimously passed 5-0.

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7. **Consideration of Petition No. A-520-02, Landrum Family Limited Partnership, Owners, and Integrated Science and Engineering, Agent, request to delete a required 50 foot buffer for the first 300 feet along the south property line to allow a proposed detention pond to be constructed in the buffer area. This property is located in Land Lot 70 of the 5th District, fronts on Highway 85 South, and is zoned C-H Conditional.**

John Stover of Integrated Science and Engineering stated that the subject property was zoned C-H Conditional and was located between Ramah Road and Price Road on S.R. 85 South. He advised that the south property line abuts property which is zoned residential which required the subject property to have a 50 foot undisturbed buffer. He said he was now proposing to reduce the 50 foot buffer to a 20 foot landscape area. He presented photographs of the adjacent residential property which is being marketed for commercial development. He noted that should the adjacent residential property be rezoned to commercial that the 50 foot buffer would be totally eliminated, however his client did not want to be required to wait until the property is rezoned. He confirmed that Condition #4. states that storage bay doors may face abutting residential property to the south provided that a 15 foot undisturbed buffer is maintained along the entire length of the south property line. He pointed out that he was only asking for a variance on the first 300 feet of the 541 feet along the south property line. He indicated that the existing hardwoods were the tree save area. He added that a great deal of vegetation would be planted in the 20 foot landscape area which currently consisted of very few trees. He presented a photograph of another site planted with wax myrtles and Elaeagnus. He noted that the Elaeagnus had only been planted five (5) years ago and was already 12 feet tall and 20 feet thick. He added that this was what they are proposing to plant along S.R. 85.

Chairman Beckwith pointed out that the concept plan submitted with the application was not the same plan submitted to the P.C. tonight.

Mr. Stover replied that the concept plan submitted tonight was for clarification and showed the inside of the proposed detention area instead of the outside limits, and showed the limits of grading for the detention pond.

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.

Sandra Harp, real estate agent for Dorothy Price who owns the adjacent property, stated that she was not in opposition to the petition but did have some questions for the applicant.

Chairman Beckwith asked if there were any plans for the abutting residential property.

Ms. Harp replied that her client planned to rezone the property to a commercial zoning.

David Bartosh asked if the two (2) properties were both zoned commercial then the buffer would not be an issue.

Kathy Zeitler replied that if both properties were zoned nonresidential then the 50 foot buffer would not be required, only a six (6) foot planted landscape strip. She advised that there was a big difference between a buffer and a landscape strip. She pointed out that a planted landscape strip requires only one (1) tree every 20 to 40 feet with shrubs, however a buffer was required to provide a visual screen at least four (4) feet in height which consisted of more densely wooded trees and shrubs.

Dorothy Price asked if the proposed detention pond would damage her property.

Chairman Beckwith stated that he would allow Mr. Stover to respond to her comments should he chose to do so during his rebuttal.

Kevin Fannin representing Royal Ridge Homeowners Association consisting of 72 homes expressed concern about the view from S.R. 85. He suggested that perhaps there were some other alternatives.

He pointed out that 25% to 30% of the frontage along S.R. 85 would consist of detention ponds. He also expressed concern about the landscape strip. He asked that the applicant reconsider having the detention ponds so close to the front of the property.

In rebuttal, Mr. Stover commented that his client was willing to change the 20 foot landscape strip to a 20 foot undisturbed buffer along the south property line. He advised that detention ponds were planned to be located along S.R. 85 due to the ridge in the property and the 24 inch pipe under S.R. 85.

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

David Bartosh made a motion to deny the petition for the sake of discussion. Larry Blanks seconded the motion.

Mr. Bartosh stated that he understood the hardship as far as the location of the detention pond but eliminating a building may be a remedy.

Mr. Stover replied that eliminating a building was found not to work from a standpoint of development. He said his client was trying to avoid the limitation and time involved in waiting for the adjacent property to be rezoned. He pointed out that if Mrs. Price sells the property and it is rezoned then the buffer will no longer be required.

Mr. Bartosh replied that if a building was eliminated and the pond relocated, even with the adjacent property zoned residential, then this application would not be necessary.

Mr. Stover replied that the elimination of one (1) building may not generate the area necessary for the detention pond. He said the property would not be developed should the reduction be required.

Mr. Blanks stressed that the adjacent property was zoned residential and that the Z.B.A. should only consider its current zoning. He said he was not in favor of eliminating or reducing a required buffer between commercial and residential property.

Chairman Beckwith added that there is no guarantee that the adjacent property will be rezoned.

Mr. Bartosh asked if the buffer is a dense vegetative natural buffer.

Kathy Zeitler replied that a buffer is required to be a minimum height of four (4) feet and must provide a complete screen with dense plantings. She added that additional plants, a privacy fence or berms could also be utilized to supplement the existing plants in a buffer.

Chairman Beckwith asked Mr. Stover if the surface around the buildings would be impervious or gravel.

Mr. Stover replied asphalt.

Chairman Beckwith asked if any consideration had been given to how much less of a detention pond may be required if the surface around the buildings were gravel.

Mr. Stover replied no, because gravel parking lots over time are almost as impervious as asphalt due to compaction, and maintenance was also greater for gravel.

Chairman Beckwith added that runoff is also a concern. He said that there may be other options to be investigated.

Mr. Blanks asked how many feet were left after the first 300 feet.

Mr. Stover replied 241 feet which is the tree save area where the existing hardwoods are located.

Hearing no further comments, Chairman Beckwith called for the vote.

The motion for denial unanimously passed 5-0.

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NEW BUSINESS:

8. Consideration of a public hearing date for the May public hearing. The Public Meeting Room is available on Monday, May 20, 2002 or Tuesday, May 28, 2002.

Tom Mahon made a motion to hold the May public hearing on Tuesday, May 28, 2002 due to the Memorial Day holiday. Larry Blanks seconded the motion. The motion unanimously passed.

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Chairman Beckwith asked if there was any further business. He advised that the April Public Hearing had been canceled due to the lack of applications.

Larry Blanks requested that lots with double front yards be reviewed and discussed.

Attorney McNally explained that if the current ordinance was amended that houses with double frontage would be allowed to be constructed as close as 15 feet to the street under some zoning districts. He stated that he did not know a way that it could be set up to be administered. He added that for the few times the Z.B.A. gets this problem, versus the fact that on every corner a house could possibly be located 15 feet from the right-of-way. He noted that there is a choice, either you have the setbacks as you now have it where all the houses are setback a minimum of 40 feet from a right-of-way or they would be a minimum of 15 feet from the right-of-way, similar to a New York corner.

There being no further business, David Bartosh made the motion to adjourn the meeting. Ron Mabra seconded the motion. The motion unanimously passed (5-0). The meeting adjourned at 9:00 P.M.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

**BILL BECKWITH
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**