

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on December 15, 2003 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

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

MEMBERS ABSENT: None

STAFF PRESENT: Kathy Zeitler, Director of Zoning/Zoning Administrator
Chris Venice, Director of Planning/Community Development Division Head
Dennis Davenport, Assistant County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

Welcome and Call to Order:

Chairman Bartosh 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 November 17, 2003.

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

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

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Chairman Bartosh made a motion to hold Executive Session to discuss a legal matter. Bill Beckwith seconded the motion. The motion was unanimously passed 5-0.

Executive Session began at 7:09 P.M. to discuss one (1) item of legal. Those attending the Executive Session were Attorney Dennis Davenport, Chairman Bartosh, Bill Beckwith, Tom Mahon, Ron Mabra, and Larry Blanks.

Chairman Bartosh reconvened the public hearing at 7:22 P.M.

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2. Consideration of Petition No. A-541-03, Mary S. Austin and Oliver B. Bobbitt, Owners, and Brian Corbin of QuikTrip Corporation, Agent, request a Variance to allow all parking spaces to be located in the front of the proposed structures. The S.R. 85 North Overlay requires 50% of parking spaces to be located to the side or rear of the principal structure. This property is located in Land Lots 232 and 233 of the 5th District, fronts on S.R. 85 North, S.R. 279, and Old Road, and is currently zoned C-H.

Attorney Doug Warner of Peachtree City stated that he was representing QuikTrip, as well as, the current owners of the property. He introduced Attorney Nick Cagler from Attorney Warner's firm, Tom Wells, Director of Real Estate for QuikTrip, Brian Corbin, Real Estate Manager for QuikTrip,

and one of the property owners, Bo Bobbitt. He presented a site plan and also submitted brochures to the Z.B.A. He reviewed QuikTrip's company highlights as follows: QuikTrip is privately held out of Tulsa, Oklahoma, 413 stores in nine (9) states, 100 stores in the Atlanta area, yearly sales of nearly \$3 billion dollars, ranked 64th in the top 100 privately held companies by Forbes, voted 41st this year by Fortune magazine of the "100 Best Companies to work for", guarantee everything they sell, spend \$40,000 per year per store to maintain a nice appearance, give 5% of profits to the local charities and United Way, American Red Cross, Salvation Army, and March of Dimes, donated \$1 million dollars to United Way last year, average paying \$750,000 in state and local taxes each year, on average have 13 times fewer robberies, good security utilizing photometric design, interview 8-10 people for every one hired, employees wear uniforms, store managers average approximately \$50,000 per year which is twice the industry norm, support law enforcement, less than 3% of retail area is devoted to alcoholic products, and have secret shoppers. He said he did not see how you could ask for anything better than QuikTrip.

Attorney Warner stated that QuikTrip will be a plus at budget time. He pointed out that the subject property was located at the intersection of two (2) major Georgia State highways which is a great place for a service station. He advised that the P.C. recommended the rezoning unanimously and the B.O.C. passed the rezoning unanimously. He said that they now have a development problem which involves the S.R. 85 North Overlay Zone that requires 50% of the total parking must be located on the side and rear of the building or structures on the site. He questioned if the canopy was a structure which would allow QuikTrip to build this project. He pointed out that the canopy will be constructed out of steel, designed by engineers, and is load bearing. He said that if the canopy is not a structure and the ordinance is addressing the principal structure then the design as proposed would not be in compliance. He remarked that when the parking requirements were adopted for the S.R. 85 North Overlay Zone that they were not thinking about convenience stores and gasoline stations because the last place you want to place parking for a convenience store or gasoline station is behind it. He added that they were probably thinking about a strip shopping center. He commented that you can drive up an down S.R. 85 and behind the convenience store or gasoline station is not where you want to be. He stated that the B.O.C. made a big deal about safety. He said that it was very important to several of the B.O.C. that the lighting be sufficient to guarantee safety and that there be visibility. He added that the Georgia Petroleum law requires the person operating the front desk be able to view all the 20 gas pumps at one time.

Attorney Warner stressed that QuikTrip is very concerned about safety. He advised that they are building a six (6) foot fence along the rear of the property. He confirmed that QuikTrip has 40 years of experience in building and maintaining gas station sites. He pointed out that an invisible rear area is not a good safe area for gas station or convenience store. He said that if the canopy was built in the rear that technically the parking requirements could be achieved but it would have the lighting and noise facing the residential area which is not a good plan. He stated that the whole idea of the overlay zone is to make the corridor aesthetically pleasing.

Attorney Warner addressed the six (6) criteria for granting a variance. He pointed out that the property is unusually shaped and located at the intersection of two (2) highways. He advised that if the property was reconfigured the project would not work due to drainage which is an extraordinary and an exceptional condition pertaining to this particular piece of property. He remarked that QuikTrip would not be able to develop the property with the parking requirements of the overlay zone. He said that there are no other service stations to compare the proposed development to in regard to the overlay requirements or being located at the intersection of two (2) major highways. He stated that the convenience store would be operated 24 hours per day, 7 days per week, and would be open with all the other retail establishments would be closed. He stressed that the safety factor is much more important here than there which is peculiar to this property. He added that the granting of the variance would not cause substantial detriment to the public good or impair the purposes or intent of the regulations. He reported that the plan was suitable and reasonable. He stated that properties in the S.R. 85 North Overlay are not 24 hours per day, 7 days per week operations but are more retail and commercial type enterprises opened during normal business type hours so a literal interpretation will deprive QuikTrip of their rights in using the property when others who do not have the same safety requirements would be able to build their

business but QuikTrip cannot build with an unsafe design.

Attorney Warner presented a rendering of the proposed development which showed the parking spaces back further on the property than required. He asked the Z.B.A. to grant the variance and added that QuikTrip would meet the other overlay zone requirements, landscape requirements, aesthetic requirements, and architectural requirements but they are unable to meet the parking requirements which create an undo hardship on them. He closed in saying that some of the QuikTrip people would respond to the Z.B.A.'s questions.

Chairman Bartosh 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 necessary, he closed the floor from public comments.

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

Mr. Mahon expressed concern about a 100% variance. He explained that the Z.B.A. does not write the ordinance and should not override what the B.O.C. has put in place. He advised the petitioner to address the B.O.C. to have the ordinance revised because the variance was too great and he could not support the petition.

Chairman Bartosh asked for clarification on the structure comments regarding the canopy.

Kathy Zeitler explained that the canopy is a structure, but the parking was intended to be for the principal structure which would be the convenience store. She confirmed that a gasoline station use does not require parking spaces because there is parking at the pumps. She added that the parking for the convenience store requires one (1) space per 300 square feet of gross floor area.

Larry Blanks asked what was the total number of parking spaces required.

Mrs. Zeitler replied that the convenience store is approximately 4,500 square feet so 15 parking spaces would be required. She commented that they are proposing a lot of extra parking.

Chairman Bartosh asked if the entire parking had to be split, or only the required parking.

Mrs. Zeitler replied that the ordinance requires 50% of the total parking spaces on the side or rear, not 50% of the required parking.

Mr. Blanks concurred with Mr. Mahon's motion.

Ron Mabra stated that there are other options other than granting a 100% variance.

Bill Beckwith asked if there were any entrances or exits to the rear of the building.

Thomas Wells, Director of Real Estate, replied no sir. He said that in this location, for safety reasons for the employees and customers that QuikTrip will not risk the liability associated with rear entrances and exits. He added that even if they did and they barricaded them off during non-peak hours where there was a potential safety concern then it would require additional unnecessary paving. He stressed that the company philosophy and position is that this is too great of risk and is not worth one location to put the employees or customers in this situation. He added that QuikTrip has been in business for over 45 years and considered one of the leaders in the industry. He said that 15 years ago when they came to Atlanta that a convenience store did not have this type layout but today it is basically this same concept. He confirmed that he has Mr. Bobbitt's property and a portion of Ms. Austin's property under contract. He commented that due to the overlay requirements that QuikTrip had to add a portion of Ms. Austin's property to the contract.

Mr. Beckwith asked if there were any other Quiktrip locations with parking in the rear.

Mr. Wells replied one (1) in Cartersville, Georgia.

Mr. Beckwith asked how QuikTrip deals with the safety issue at that store.

Mr. Wells replied that they lock the back door, however the layout and configuration of the roadways are different.

Mr. Beckwith asked if QuikTrip had any security monitoring devices on the back of the store in Cartersville.

Mr. Wells replied no sir. He reported that they typically monitor vendor parking and the trash enclosure which is on the interior side of the layout in Cartersville.

Mr. Beckwith confirmed that there is at least one (1) other location with parking in the rear and QuikTrip has dealt with it successfully.

Mr. Wells replied yes sir. He added that there is a 24 hour manufacturing facility adjoining the site in Cartersville versus what would be at the subject location which is a wooded buffer and a wooded residential area.

Mr. Beckwith confirmed that access had been restricted to the Cartersville site even though there is parking located in the rear.

Mr. Wells replied yes sir.

Mr. Beckwith asked if this could be done at the subject property.

Mr. Wells replied possibly so but in meeting the other requirements of the overlay with the additional landscape strip there is not sufficient property to do that with the 50 foot buffer and the 25 foot setback in order to get something to physically fit in the rear.

Mr. Beckwith said he was hearing Mr. Wells state that there is a method by which you could locate the store and the parking as well to meet the ordinance even though it would be a little bit of an inconvenience rather than a flat situation where it couldn't be done. He stated that given that the Z.B.A. always looks for a way to get around the situation and not cause the Z.B.A. to consider breaking their laws just because this is something QuikTrip would like to have.

Mr. Wells replied right and that he understood.

Mr. Beckwith added that Mr. Wells had stated that QuikTrip has already done something like that.

Mr. Wells replied yes similar but on this location they do not have sufficient depth to accomplish that and the location in Cartersville had a public road on the back side as well. He confirmed that they were 25 feet off of the 50 foot buffer with the building plus an 8-10 foot side walk and a 18 foot parking space you are at 28 feet and you don't have room to get access to the parking spaces unless the access went into the undisturbed buffer.

Mr. Beckwith asked if the minimum 15 parking spaces were met as required with seven (7) in the back which were blocked off there seems to be a way to adjust the location of the building where you would be able to comply with the overlay zone. He stressed that if there was absolutely no way to do it then that would be one thing but Mr. Wells had explained that it could be done.

Mr. Wells reiterated that with this particular configuration with the depth of the property that he was open to suggestions but he is not certain how it can be done and put parking in the back without getting into the buffer.

Mr. Beckwith remarked that the Z.B.A. was not there to suggest how the plan could be modified but Mr. Wells had said there is a way to do that.

Chairman Bartosh welcomed QuikTrip and said he was looking forward to their attractive, user friendly store. He added that he appreciated the concept. He said that there are other avenues to pursue and one is to put the building up front and the canopy in the rear but there are other means to exhaust without the Z.B.A. granting a 100% variance. He added that he understood the argument about the B.O.C.'s intent, however that is not for the Z.B.A. to debate or correct. He remarked that he could not support the variance request.

At this time, Chairman Bartosh called for the motion. The motion to deny the petition was unanimously passed 5-0.

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3. Consideration of Petition No. A-543-03, Frank H. Naso, Owner, and Harry R. Stamper and Sean Cash of Group EMF, Inc., Agents, request a 39 foot Variance to the west property line adjoining commercial property, and a 25 foot Variance to the north property line adjoining commercial property, to allow placement of tower co-location equipment within the existing tower leased area on site. The existing communications tower is a pre-existing tower located in the Highway Corridor. This property is located in Land Lot 248 of the 5th District at 1929 S.R. 85 North, and is currently zoned C-H.

Harry Stamper of Group EMF, Inc. stated that he was representing MetroPCS Georgia, Inc. He read the following aloud: This is a request for a variance of 39 feet from the west property line and 25 feet from the north property line. This variance will allow MetroPCS to locate their equipment, lines and antenna on an existing 150 foot monopole tower located at 1929 S.R. 85 North, Fayette County, Georgia on an approximately two (2) acre tract of land zoned C-H and owned by Frank Naso. MetroPCS's facility will be located within the existing 45 foot by 50 foot tower compound owned by SpectraSite Communications, Inc. Metro PCS has leased an area of 12 feet by 20 feet within the existing 45 foot by 50 foot area to install their PCS radio equipment. This equipment consists of three (3) each radio cabinets, each the size of a washing machine, and an ice bridge to connect and protect the coaxial cable and antennas. Metro PCS will install their antennas on the existing tower at an elevation of 121 feet. This facility will be a part of a wireless network to provide safe reliable and uninterrupted PCS service to this portion of Fayette County. Once constructed the facility will be unmanned. Only monthly site visits by a maintenance technician are anticipated. The facility will not use water or sewer services, and will not generate any waste. We will require electricity and phone service, but only use about as much as a single-family residence. The Fayette County Zoning Department was kind enough to provide a copy of the thorough staff report concerning our application. Within the report the Fayette County Engineering Department asked if the MetroPCS equipment could be placed to the east of the existing equipment buildings and expand the existing tower compound fence. Due to the current configuration of the tower and the connection of the three (3) existing carriers located on the tower this method is not preferred. The reason is there is no entry port on this side of the tower. MetroPCS would be encroaching on the other carriers, if located in this area the coaxial cable would need to be installed on the exterior of the tower depleting the current tower aesthetics and possibly failing the tower structure. In closing, a similar variance was granted for this property under Petition No. A-424-97 on August 26, 1997 reducing the building setbacks from 50 feet to 30 feet. We respectfully request the same consideration. This tower co-location is necessary for MetroPCS to supply safe, reliable and uninterrupted wireless service to the general public and emergency personnel in this portion of Fayette County. We respectfully submit to the Z.B.A. that this co-location on an existing tower does not injure either the community or the intent or purpose of your fine Zoning Ordinance and if the variance is granted complies with the requirements and spirit of the Fayette County Zoning Ordinance. Because this request complies with all the requirements of your Zoning Ordinance, causes harm to no one or property, is concealed in an existing fenced and landscaped tower compound and is essential to provide safe and reliable wireless service to the general public and emergency personnel we respectfully request the approval of our application. Again, my name is Harry Stamper and I would be pleased to answer any

questions the Z.B.A. may have. Thank you.

Chairman Bartosh 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 necessary, he closed the floor from public comments.

Tom Mahon made a motion to approve the petition. Chairman Bartosh seconded the motion.

Mr. Mahon said that this meets the intent of the B.O.C. to have towers primarily in the highway corridor.

Larry Blanks concurred.

Chairman Bartosh asked why the Engineering Department commented that the footprint should be enlarged. He asked if there was an engineering reason for this statement.

Kathy Zeitler replied that the Engineering Department was trying to point out an alternative without the need for a variance however they did not have the advantage of knowing all the details of where the electrical was located and how it would be connected which was explained tonight.

Ron Mabra stated that Mr. Stamper had clarified the Engineering Department's comments.

At this time, Chairman Bartosh called for the vote. The motion for approval of the petition was unanimously passed 5-0.

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4. **Consideration of Petition No. A-544-03, H.D.Thames, Jr. and Carolene Thames, Owners, and John Zadjura of Integrated Science and Engineering, Agent, request a Variance to a requirement of the PUD-PEF Zoning District that all parking and access areas be paved and landscaped per the Development Regulations, to allow an expansion of a wholesale nursery at Flintwood Farms. This property is located in Land Lots 140 and 141 of the 5th District, and is currently zoned PUD-PEF.**

John Zadjura of Integrated Science and Engineering stated he represented the Thames family. He said he was requesting a variance to change parking and access to gravel or an all-weather surface instead of paving. He remarked that using gravel or an all-weather surface for parking and access seems to be more practical and within the bounds of this local family farming operation. He explained that as a wholesale nursery there is no public interaction with the day to day operations. He pointed out that access to the nursery would be through an automatic security gate and interior access roads are intended for commercial type off-road vehicles. He remarked that the normal farming and agricultural practices of constructing low impact environmental friendly and easily maintained gravel roads would best suit this site. He commented that the site is currently an operating family farm run by the Thames family and they wanted to increase the size of their growing operations, greenhouses, and growing fields, and need access to them for the farm equipment and trucks that are picking up the agricultural products and dropping them off. He confirmed that the subject property is zoned PUD-PEF and that zoning district states that access and parking must be paved but it is not clear whether it intends parking and access just for the parking needs to be paved or throughout, but it has been interpreted to be throughout. He said that paving throughout is not compatible with a nursery operation because access ways weave in between the fields and along the greenhouses. He explained that paving will increase runoff which could flash flood the fields and cause problems in that respect and would also introduce pollutants into the growing beds such as seepage from the asphalt. He went on to say that if you visit the site and the nature of the farming operation is a few hundred acre farm laced with gravel roads throughout and the proposed use is still in keeping with the whole farming operation and adding asphalt roads to this one area of the farm seems to be inappropriate and unnecessary since there is no public interaction so if it is a safety concern, it should not be a problem. He expressed concern that farming equipment

and trucks turning on radius would tear up the pavement so they will be forced to incur the cost of heavy duty pavement which is extreme for a farming operation. He added that they would be unable to maintain the pavement with the type equipment that they have on-site but they could maintain the gravel roads. He asked the Z.B.A. to consider approval of a variance for the reasons presented.

Chairman Bartosh 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 necessary, he closed the floor from public comments.

Larry Blanks asked if a variance would be necessary if the property were zoned A-R.

Kathy Zeitler replied no and advised that the A-R zoning district does not require paving but it specifically states in the PEF zoning district that the drives and parking need to be paved.

Chairman Bartosh made a motion to deny the petition. Larry Blanks seconded the motion.

Chairman Bartosh stressed that there are far too many alternatives available to the applicant.

Bill Beckwith asked if a site plan had to be approved for the proposed development.

Mrs. Zeitler replied that a site plan would have to be approved. She added that a PEF must be a minimum of 100 acres and they had 102 acres zoned PEF and the subject property is a part of the 102 acres.

Mr. Beckwith asked if a site plan had been approved.

Mrs. Zeitler replied that a site plan had previously been approved for a social hall, restaurant, and gift shop however a site plan for the proposed development could not be approved until a variance was approved.

Mr. Beckwith asked if the previously approved site plan indicated paved parking and access.

Mrs. Zeitler replied yes because the uses were typically retail and public uses, but this particular use would typically allow gravel parking if it were located elsewhere, but the PEF district requires pavement.

Mr. Beckwith stated that they requested the PEF 5-6 years ago.

Mrs. Zeitler replied yes.

Mr. Beckwith replied that this was his point because it was approved and agreed upon for paved parking when it was rezoned.

Ron Mabra stated he had no comments.

Chairman Bartosh asked how the number of parking spaces were calculated and does the ordinance mean parking just for the people who are there or does it actually mean all the area beyond the customer parking and entrance has to be paved.

Mrs. Zeitler explained that parking is based on the use and covers both customer and employees, plus the square footage of the greenhouses for a nursery. She added that each use has a different formula for parking. She advised that the code states all parking and access areas must be paved which means not only the parking but also the driveways between the greenhouses where they would be loading and unloading trucks.

Chairman Bartosh commented that he would prefer not to see any pavement due to stormwater issues and environmental concerns but because of the uniqueness of the way this has been changed to PUD-

PEF and there are other alternatives, there is not a hardship and it does not meet the six (6) criteria for a variance approval.

Mr. Blanks remarked that the alternative would be to rezone the property to A-R and the problem is solved.

Chairman Bartosh called for the vote. The motion to deny the petition was unanimously passed 5-0.

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5. Consideration of rescheduling the December 27, 2004 Public Hearing to December 20, 2004 due to the observation of the Christmas holiday.

Chairman Bartosh made the motion to reschedule the December 27, 2004 public hearing to December 20, 2004. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

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Chairman Bartosh asked if there was any further business.

Kathy Zeitler advised the deadline to submit an application was on Friday, December 19, 2003, however no applications have been submitted for the January Public Hearing as of tonight.

Larry Blanks advised that Attorney Bill McNally had surgery this morning. The Z.B.A. sent their best wishes to Attorney McNally.

Chairman Bartosh wished everyone a Merry Christmas and a Happy New Year.

There being no further business, Tom Mahon made the motion to adjourn the meeting. Larry Blanks seconded the motion. The motion unanimously passed (5-0). The meeting adjourned at 8:14 P.M.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

**DAVID BARTOSH
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**