

**Cherokee County Zoning Board of Appeals
Public Hearing
Minutes
Thursday, April 7, 2005
6:30 p.m.**

The Cherokee County Zoning Board of Appeals held its regularly scheduled meeting on April 7, 2005, in the Jury Assembly Room of the Cherokee County Justice Center. In attendance for the Zoning Board of Appeals were Chairman Evert Hekman, Vice-Chairman Roy Taylor, Sean Jerguson, and Amy Mumaugh. In attendance for Cherokee County Staff were Mark Mahler, County Attorney, Vicki Taylor, Zoning Administrator and Vicki Mulkey, Zoning Technician. The meeting was called to order at 6:30 pm. **Greg Elder was not in attendance.**

Old Cases

Case #05-02-008V Verizon Wireless requesting a variance to Article 7, Section 7.7-27C(2)(a); Telecommunication Towers. The applicant is requesting a variance to reduce the tower setback to 160.2' on the west property line and a variance to reduce the tower setback to 122' along the front property line. The Cherokee County Zoning Ordinance requires a 180' building setback for this location and due to the tower height being 180' tall. This is a revision from their original application. The property is located at 185 Moose Loop Road in Land Lot 162 of the 14th District and further described as Cherokee County Tax Map 14N18, Parcel 002.

Vicki Taylor gave Staff recommendation that while the siting of telecommunication towers is always difficult, siting one in a residential zone is ever more of a challenge. The applicant would be required to use an alternative tower structure, which is defined in the Zoning Ordinance as "man-made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of towers or antennas". The Georgia Power Company Right-of-Way provides an additional buffering from the residential property within the city limits of Canton to the west. Staff recommends this application be approved subject to the approval of an alternative tower structure.

David Kirk represented this case. He stated his is the attorney with Troutman & Sanders representing Verizon Wireless in this case. He said Dianna Holland and Wayne Heinekey, Site Acquisition Specialists with Compass Technologies along with Commander Moore and a number of people of the VFW Post. He said an earlier version was before you in February 2005 and you voted to deny that application. That application requested approval of a 30 foot side yard with respect to Dr. Swords property to the east, rather than the regarded 180 feet. Dr. Swords opposed this variance as did Mr. Geiger, who is the property owner to the north; even though, no setback variance was required with respect to Mr. Geiger's property as it was more than 300 feet from the tower base. Immediately following your vote Verizon asked its Engineers to take another look at the site, to work with the property owner and to thoroughly re-evaluate this site in an effort to identify another location that could work on the VFW property. They were able to identify such a location and communicated that to the Board of Commissioners prior to the expiration of the 10 day appeal period. In response to that the Board sent it back to

you for reconsideration. As a remand for you to consider this new information. As indicated on the revised site plan, which we submitted to you, the proposed tower has been relocated in such a way as to eliminate any need for a setback variance from any residential property line. It is now the required 180 feet from Dr. Swords property line to the east furthermore the newly proposed location is an additional 140 feet away from Mr. Geiger's property to the north, so that is now 440 feet away from Mr. Geiger's property. Now the shift in the proposal location did require us to modify our application to request the two variances that are before you this evening and those as Ms. Taylor said are respect to property used for non-residential purposes. The proposed location is 160 feet from the Georgia Power Transmission right-of-way to the west and approximately 122 feet away from the right-of-way of Moose Loop Road. He said his understanding of the right-of-way of Moose Loop Road is 50 feet wide so it is 172 feet away from the adjacent property to the other side of Moose Loop Road which is the Moose Lodge property. He said he had submitted a letter in the record from Georgia Power Company indicating it is not opposed to this application. Ms. Holland is hear and is prepared to testify, if necessary, that the governor of the Moose Lodge, Mr. Sims, told her they were not opposed to the application, but due to national policy was unable to put that in writing. Furthermore, supplemental materials he provided include a letter from the tower engineer and manufacturer which states even in the extraordinary rare event of a tower failure the requested setbacks are sufficient to protect the adjacent properties and nearby structures from any harm. He believed in the letter that there is a theoretical fall zone of 90 feet in extraordinary rare event that the tower did fail and certainly within the 122 feet and 160 feet that they are requesting. First, in an e-mail to Ms. Taylor, Mr. Geiger suggested that Verizon Wireless should use the water tower owned by the City of Canton since other carriers have located there. He submitted for your review and hopefully is in record a letter from Verizon Wireless Radio Frequency Engineer explaining in more detail Verizon Wireless service goals for this site and why the water tower site, which was thoroughly evaluated, simply would not work and was rejected. Second, your Staff has looked at this new information very carefully and has recommended to you that you approve this request as subject to the use of an alternative tower structure as is required by your ordinance. Obviously, this is acceptable to Verizon Wireless to have an alternative tower structure and we would suggest we be directed to work with your Staff to determine the most suitable alternative structure for this location. There is a wide variety, even as stated in the ordinance, of alternative tower structure types that could be used and we would be happy to work with your Staff in going over the details, the pluses and minus, of each one of those if it is your desire. Consequently, they respected requested you accept your Staff's recommendation to approve this application for the two setback variances requested. He reserved any remaining time to respond to any issues that may be raised by other speakers or he would be happy to answer any questions you may have at this time or happy to wait until other speakers have made their remarks.

George Moore spoke in favor of this variance. He stated he is presently the Commander of the Veterans of Foreign Wars, Post 5262, located here in Canton, Georgia. He said his organization is composed solely of ex-servicemen that have served their country in a hostel war zone in times of war. Our aims and goals are to assist our men and women presently serving in the armed forces and their families who have been left behind. They do these things in many ways and he would like to list a view of the things the VFW does. Foremost, we provide phone cars for the soldiers in Iraq. We provide monetary assistance for the families let behind. We provide honor guard for grave side services for our fallen veterans. We donate funds to the American Cancer

Society and the Gideon Society. We support the VFW National Home for Children located up north. Each year they present a plaque to the outstanding cadet in the Junior ROTC program at both Cherokee High School and Sequoyah High School. We sponsor two essay contests each year for the middle school and high school students. One of their essay contests is called the Patriot's Pen and the other is called The Voice of Democracy. The theme of these contests are centered on citizenship and prizes are awarded to each of the winners of the essay contests. Our post only meets once a month and the first order and the first order of business is an opening prayer followed by the pledge of allegiance to the United States of America. He respectfully request that the Board grant the variance requested which will enable Post 5262 to further enhance the contributions they make to our community. He said he was proud of his country and proud to be a veteran.

Chris Geiger spoke in opposition. He said he is an adjoining property owner, along with Edwin Swords and one clarification was that he owns the property to the north jointly with Edwin Swords and he owns property that adjoins his one lot over from this tower site except the fact that this tower will be no further away from our back kitchen window than those pine trees outside these windows here. He stated there were hard woods between this ridge line and that cell tower and that will be his view. Specifically, in regards to this I'm going to ask you to deny the grant as of this variance as you did before for several important reasons and he wanted to make one quick note to the gentleman of the VFW that he appreciates their service to this country, but one of the things they fought for, in all those wars, was the protection of property rights of individuals. The granting of this variance does not protect those property rights of several individuals on Ivy Drive. First, to grant this variance would violate the existing City of Canton and Cherokee County growth boundary agreement. That agreement was entered into August 23, 2004, the City signed it on that date and it specifically provides, "Whereas the Cherokee County Board of Commissioners and the City of Canton recognize the significance of cooperative planning efforts and believe that such efforts can offer a better model for accommodating population growth and its associated impacts and can often result in a more efficient and desirable pattern of development and whereas the Board of Commissioners and City hereby establishes a growth boundary as a growth management technique and both agree to the following terms. Paragraph 2 – The Board of Commissioners and City desire to work together and agree to the following: If a development project located within growth (which this is inside the City of Canton's growth boundary) is submitted to the Board of Commissioners for consideration, the Board of Commissioners desires to obtain the City's cooperation regarding input regarding the project within the growth boundary by either annexation to the City prior to development or by a memorandum of understanding that the development project will meet quality design standards and desired uses." He stated this project has not been submitted to the City of Canton. He said he talked with Benny Carter, the City Manager, this afternoon and he said he has not seen it and nothing has been presented to him and to him it does apply in this instance. Secondly, the growth boundary agreement says, "Whereas the Board of Commissioners and City agree to work cooperatively, communicate and coordinate plans for development within the growth boundary and desire to develop a shared vision for the City of Canton and Cherokee County." The City of Canton does not allow cell towers in the City limits. They have an alternate means of locating those towers, the antennas, and that is on City water towers. The petition has stated that the City water tower at Ridge Pine Drive will not work because of their engineering that said it wasn't close enough to downtown. That's not

engineering that's marketing. If you go over and talk to the folks in their sales offices, they say they have fine coverage downtown. If that tower doesn't work, the City also has a tower at Hospital Circle that is a lot closer to downtown. There is also a tower located on Lawson Drive just east of I-575 that could accommodate this purpose in the County. "Furthermore, be it resolved that the Board of Commissioners and the City enforce the concept that joint comprehensive planning maximizes planning dollars and prevents needless duplication of services and allows the private sector to make a long term investment with increased certainty." This is the growth boundary agreement and City of Canton Future Land Use Map and this is the area in question and this is where they want to put the tower, this is a subdivision we are in the process of developing, this subdivision was held up because this growth boundary agreement was not signed. When it was signed, a law suit was settled and we went forward. Now how can anyone in the land use plan with the City of Canton make long term investments with increased certainty when the County is not respecting the agreement they entered into. This petition should be dead in the water right now because of that. Three, granting this petition would violate the County's Zoning Ordinance under Section 7-27 Standards: "The general guidelines and requirements the purpose and goals. The purpose of this regulation is to establish general guidelines for siting of towers and antennas. The goals of this regulation are to encourage the location of towers in none residential areas and minimize the total number of towers throughout the community." The City of Canton has figured out a way to do that by putting them on water towers. This is within their growth boundary district and is surrounded by high density residentially, either zoned or planned property, that's residential property. Number two, "Encourage strongly the use of joint use of new and existing tower sites throughout the county." Existing tower site are there, Lawson Drive just east of I-575, Hospital Circle water tower, Ridge Pine water tower. "Encourage users of towers and antennas to locate them to the extent possible in areas where the adverse impact of a community is minimal." To grant this variance would violate this county's zoning ordinance creating the Zoning Board of Appeals under Article 15-4 Rules and Procedures, "The Board shall have the authority to adopt rules of procedures...which further states.....No appeal requesting the same relief in regard to the same property shall be received or hear by the Board for a period of 12 months following the date of the resolution, except that this limitation shall not affect the right of the Board to grant a hearing as provided in Rules of Procedure that may be adopted by the Board." He said he has asked for those rules of procedure and he hasn't seen them. He said he doesn't know that they exist. This Board has no authority other than what is created and this ordinance gives it. He said he hasn't seen where they have that authority. This case was remanded to hear new information, but as Ms. Taylor recognizes this is a new petition. It required new noticing, it required new publication because the facts are completely different. It is not a remand where you hear you have misapplied the regulations or the law to existing facts. This is a brand new petition. This petitioner should have to wait the 12 months that anyone similarly situated would have to wait. Four, I ask you to deny this petition for a variance based on Verizon's lack of credibility. The original application which they presented and as Mr. Taylor very insightfully pointed out in the original application it said, "For Verizon to utilize this site the required setback to east property line must be reduced to 30 feet. The subject property has extraordinary and exceptional conditions related to topography. Limit the useable area of the property for the development in general and for the desired telecommunications tower specifically. Any site on the interior of the subject property would require substantial earth work and the installation of retaining walls which would threaten the feasibility of the site all together. Requiring the tower to meet the required setback would

impose an unnecessary hardship on the property owner and Verizon Wireless by requiring the tower to be located such as it's over all height would have to be increased in order to overcome the topographic changes and to provide the same signal strength." Suddenly, and without much effort, those insurmountable problems were resolved. Amazing isn't it. An effort, as once again Mr. Taylor pointed out, that they didn't originally make in their first petition. The sophisticated engineering proved to be nothing more than a marketing analysis, we want to be closer to downtown. The sites at Hospital Circle and Lower Scott Mill Road are closer to downtown. Originally, according to the Verizon letter sent to Edwin Swords anywhere north of Butterworth Road worked. So, let's cut to the chase on this. Is this really a desire to provide better service or does the money to be had from leasing additional antennae locations on that tower, none of which will be passed on to the VFW, really drive this petition. Verizon said it wants to respect the county's joint use of tower sites as long as it is their tower. In the early 1980's, President Ronald Reagan and President Mikhail Gorbachev of the Soviet Union had a series of meetings regarding strategic arms reductions and the destruction of nuclear war heads. The phrase coined by Reagan at that time, which describes his method of dealing with the Soviets as you students of history may remember, was trust, but verify. Now so far you have trusted every fact that Verizon has presented to you, but have you verified any of it? Have you independently verified that the water towers won't work? That other existing towers won't work? Have you verified their site inventory? Have you verified that additional service is even needed? Their sales people say it isn't needed. Have you verified that these towers will fall as a single pole? Have you fully verified anything that they have presented, because if you haven't and if this tower is built and one day you are driving through south Canton and look way up in the air, or the gentleman of the VFW, when you destroy the economic potential of that zoned multi-family residential property and the physical beauty of it for a mere pittance of what Verizon is going to be making off those additional antennas will any of you think that you've been hoodwinked? As for the residents of Ivy Drive and those of south Canton and for the Swords family and for his family whenever we look out of our kitchen or den windows or sit in our back yard and see this tower marring the sunset to the west we'll know you've been had.

Mr. Kirk spoke in rebuttal. He addressed the Chair and said what he had given him was the result of what are called a balloon test in which a balloon approximately the size of himself but maybe a little wider but about height. That was placed on the site in the location where the tower would go and we use those arrows to indicate where the top of the tower would be from various locations. His understanding that two of those locations include the driveways of Mr. Geiger and Dr. Swords, so you can see that the visual impact even in the winter time, when there are no leaves on the trees, is minimal. With regard to the growth boundary issue, the application that was submitted to you was not an application for zoning or a development project that is submitted to the Board of Commissioners whether a cell tower would meet that standard or not he would have to defer to your County Attorney. Clearly, the county would abide by that agreement where it felt it was required to abide by it. Mr. Geiger is very careful to point out the purposes of the zoning ordinance, with regard to telecommunication towers, what he doesn't point out are the actual requirements that are in the ordinance itself. We meet those requirements in regards to his property. We met those requirements with the initial application in regards to his property. We now meet it in regards to Dr. Swords property. Those are the only residential properties affected, the other is a transmission right-of-way that is owned by Georgia Power and is 100 feet wide and already has transmission towers that are well over a hundred feet tall on it

already. The other property is a non-residential property. With regard to whether this violated the county's zoning ordinance or not he believed the Board of Commissioners has the authority to remand it. That is something they explored with the County Attorney prior to the appeal and they felt there was sufficient new information regarding it. You can remand something for reconsideration of new information and that's what they decided to do. This is the third red herring that is being dragged across your path with regard to this project. The lack of credibility is hard to respond to when someone calls you a liar. What happened after the denial, Verizon was forced to think outside of the box. Previously, they had been looking at moving the site in a due westerly direction and in fact introduced severe topography and it did introduce really infeasibility into the project. What they looked at then was to move it in a southwesterly direction to essentially maintain the same ground elevation and that allowed them to put together the proposal they brought to you this evening. He said that he tends to believe the scientists and the trained frequency engineers more than he believes the sales people for any entity. Certainly there is coverage in the Canton area, but if you look at the materials in the records simply having coverage is not the goal here, the goal is to have good building penetration in downtown Canton, which is what this site provides and what this site hopefully will provide. Not only that, within a few years, Verizon like many other carriers will be providing internet service over the towers and perhaps competing with cable TV over the towers in terms of future needs there will certainly be a need for additional capacity. He said he would be happy to answer any questions they have as well as Ms. Holland and Mr. Heinekey.

Chairman Hekman closed the public hearing.

Amy Mumaugh asked Mr. Kirk if the balloon is at the top of the tower. Mr. Kirk replied that was flown at 180 feet above ground level at the location. Basically someone stood right on the point where the tower is proposed to go and that is the very top and as you can see without leaves on the trees you can barely see it from those locations. He said he thought the representation you have been given is that it would be looming over people's houses is inaccurate. It is 440 feet away from the property line to the north and 180 feet away from the property line to the east and if this property was 360 by 360 we could put it right in the middle and not even have to submit for variance. So your ordinance recognizes and allows for variances to be made where they are warranted. There is not one needed in regards to Dr. Sword's property and there is not one needed in regards to Mr. Geiger's property.

Sean Jerguson addressed the letter dated March 11 from Verizon Wireless as it refers to the desire to connect to an existing Verizon site to the south along Highway 5. Where is that tower? Mr. Kirk asked for a moment to find that information.

Mr. Jerguson asked Mr. Mahler is this case a new petition? Mr. Mahler said he thought the Commissioners have the authority to remand it back to the Zoning Board of Appeals as the same case with a couple of variances dropped instead of going directly to court.

Mr. Kirk referred to the comment Mr. Geiger made about Verizon leasing towers to other carriers and the monetary comment. He stated Verizon would much rather collocate on a water tower than have to build a new tower because it far less expensive, far less time consuming, you certainly don't have to spend the time on legal fees, the money on legal fees that Verizon has

spent to present this to you as a revenue enhancing effort by Verizon grossly mischaracterizes the nature of this application.

Roy Taylor stated the three towers mentioned by Mr. Gieger all fit within the green space shown by the coverage by the towers shown here. As the only resident of the City of Canton here perhaps it hits more to home with me this growth agreement between the City of Canton and the County and what the City of Canton is doing. That is an issue that it has not been presented to the City Manager or Planning Directors of the City of Canton when we are in that agreement. Not necessarily that it is required, but it is something that ought to be looked at because that's why we have the agreement.

Vicki Taylor said they submit development plans and rezones, but not towers and they don't send them to us either.

Mr. Taylor said they are looking to keep the towers out of residential areas. That is our intention by our zoning ordinance. Is that not true?

Ms. Taylor said that is not true. Our zoning ordinance allows cell towers in residential zoning. Mr. Taylor asked but aren't we trying to keep them out of residential areas. Ms. Taylor said the ordinance clearly states that towers are allowed in residential zoning areas. She said she wasn't here when the zoning ordinance was written, but it is a permitted use.

Mr. Taylor addressed Ms. Taylor and stated in her presentation of this case it was referred back to the original application and the light being at the top of the tower and that was seen by several members of this Board as objectionable. Yet he sees nothing saying here that we're going to build it without that light and it concerns him that something that was so important two months ago is not even mentioned now except by you. Not even as part of their presentation and when the last thing, at least has been addressed by Staff, about an alternative tower which was brought up at that last case saying why hasn't that been presented as an alternative tower and yet one more time this has not been presented as an alternative tower except to use the word alternative on the picture of a regular tower. The saying that we will work with Staff, I don't understand why it isn't coming to us as such as part of the variance.

Ms. Taylor said she didn't know either, but when they submit a telecommunication tower application it will be reviewed. Mr. Taylor said he understood but this is a special case and they are asking for favors they are saying we want to do this even though it doesn't fit your rules and there is no effort being made to extend to us that courtesy of doing those things and because of that we aren't scientist here and really don't know if the coverage is there.

Sean Jergusson said the hospital water tower looking at your map and knowing where the water tower is on the north side of Holly Springs that those two towers piggy back and he didn't know if enough effort had been made by Verizon to analyze multiple existing sites like this because that's where those two water towers are. It looks to him and he's not a radio frequency scientist, but it looks to him that they would have the same type of coverage.

Mr. Taylor said they also have the Pine Circle, Hospital Circle and the one at the Library.

Mr. Jerguson said the reason he brought that up, if you look at the letter of March 11, 2005, they had two main objectives for this tower. The first is improving coverage for downtown Canton area and obviously the Hospital site would be the best chose because it's right in downtown. The second objective was south side along Highway 5 and it connects with the existing site in Holly Springs that was the reason I asked for this map to see where it was. Well the water tower in Holly Springs is on the north side on a hill overlooking I-575 and would most likely provide coverage to Highway 5.

Ms. Mumaugh asked if they could table this and ask for proof why those aren't workable locations.

Mr. Jerguson said that he thought that would be a wise thing to do.

Mr. Kirk said he could answer those questions.

Mr. Jerguson stated that was not presented tonight and Chairman Hekman said the public hearing had been closed.

Ms. Mumaugh said that with the tabling they could ask to see the alternative structures ourselves and see.....

Mr. Jerguson said he wanted to see the coverage.

Mr. Kirk said he could do that right now if you would like him to.

Mr. Taylor said he thinks it is more than that one objection.

Mr. Jerguson said he agreed with Mr. Taylor that being intricately involved in the land use agreement with the cities that great pain and effort were done to draw those up and he thought this Board and the Board of Commissioners, although it hasn't been done, needs to be done. The City of Canton needs to be aware and fully approached by Verizon and a letter by the City of Canton. He said he would like to see that.

Chairman Hekman said one of the concerns he has is that he isn't familiar with the growth boundary agreement and he would like to see that if it's going to be entered into this as a factor then it needs to be part of the presentation along with some of the other factors that were mentioned. Based on the comments here tonight he thought we did not have all the full information and he would like to see some more information himself.

Mr. Jerguson made a motion to postpone the request until the next regular public hearing February 5, 2005, and requesting the applicant provide more adequate information. Ms. Mumaugh seconded. Motion passed unanimously 4-0.

New Cases

Case #05-04-014V Glenn Sanborn requesting a variance to Article 7, Table 7.1A: Minimum District Development Standards. The applicant is requesting a variance of 20' to allow a 30' front building setback instead of the required 50' front building setback. The property is located at 230 Edwards Brook Court in Land Lot 988 of the 3rd District and further described as Cherokee County Tax Map 03N17, Parcel 132.

Vicki Taylor gave Staff recommendation that the proposed structure would still be some 50 feet from the edge of pavement in the cul-de-sac. In order to preserve the natural buffer and minimize land disturbance, Staff recommends this petition be approved.

Glenn Sanborn represented this case.

No one spoke in favor or opposition.

Chairman Hekman closed the public hearing.

Roy Taylor made a motion to approve. Seconded by Evert Hekman. Motion passed unanimously 4-0.

Case #05-04-015V LTH Steel Buildings, Inc. requesting a variance to Article 5, Section 5.6(c) Size of Accessory Structures. The applicant is requesting a variance of to allow a 3,200 sq. ft. accessory structure on a 6.73 +/- acre tract. The Cherokee County Zoning Ordinance allows a total square footage of 1,700 sq. ft. for this property. The property is located at 3452 Arbor Hill Road in Land Lot 1131 of the 3rd District and further described as Cherokee County Tax Map 03N18, Parcel 118C.

Vicki Taylor gave Staff recommendation that this petition be approved subject to any additional plantings if necessary to mitigate impact to the adjacent lots, as well as careful siting of the building with their welfare in mind. She didn't know exactly how they would accomplish that but she would like to have some latitude in helping locate this. She stated it isn't in their packets, but by the site plan she has it is pushed quite far in the corner and she doesn't know if that is necessary to be that far back.

No one represented this case.

No one spoke in favor or opposition.

Chairman Hekman closed the public hearing.

Discussion ensued if the case can go forward with no one representing this case. Mr. Mahler said they could choose to move forward. Mr. Taylor said there is no one objecting.

Roy Taylor made a motion to approve this request subject to the suggestions of Staff in assisting with siting to mitigate distance issues. Seconded by Sean Jerguson. Motion passed unanimously 4-0.

Case # 05-04-016V J. Calvin J. Wargo requesting a variance to Article 5, Section 5.6(a) and 5.6(c) Accessory Structures. The applicant is requesting a variance of to allow a 1,200 sq. ft. detached garage in the front yard. The Cherokee County Zoning Ordinance requires a 900 sq. ft. maximum and no accessory structures in the front yard area. The property is located at 155 Blue Pond Court in Land Lot 820 of the 3rd District and further described as Cherokee County Tax Map 03N22, Parcel 108.

Vicki Taylor gave Staff recommendations that this petition be approved subject to any additional plantings if necessary to mitigate impact to the adjacent lots, as well as careful siting of the building with their welfare in mind. She explained that landscaping is an acceptable home occupation in the AG district and that Mr. Wargo does have a business license.

Beverly and Calvin Wargo represented this case. She said because of the natural drain issue they were unable to attach the garage to the house like they originally wanted to. There is a natural buffer of trees that would shield the garage from being the first thing you see from the street. They discussed the need for the garage for their work truck and equipment.

David Bores spoke in opposition and said he is a resident of Blue Pond Estates. He has lived there since 1993 and were the second home built in the subdivision. He said this is the first attempt to build a large structure in the front of the home in the subdivision. He said 1,200 square feet is the size of a small home that would be located in front of their current residence. He urged the Board to enforce the current zoning rules. Currently, they are restricted to one structure per two acres. This represents a serious breach of that. Once exceptions are allowed it will become very difficult for the Board to enforce the rules or to deny other exceptions. He said he need the Board did not enforce covenants, but it does violate the covenants on file. However, if you are inclined to approve this variance he does urge the Board to require year round screening in accordance with Article 10 of the zoning ordinance. He said he believed they had a petition from other residents voicing their objection.

Vincent Fuchs, 1725 Blue Pond Drive, spoke in opposition and he is able to see the property in the winter time from his property, but it is a distance off. He opposed due to precedence setting in the neighborhood. He said the covenants are in questions too.

Richard Burrell spoke in opposition. He said he will only see the structure when he is driving in and out. He said the zoning was written for a purpose and the size is going to be exceeded for this structure. He objected to any business being in a residential neighborhood because it defeats the purpose of a residential neighborhood. Noise could be disturbing and the noise has been an irritant.

Chairman Hekman closed the public comment.

Beverly and Calvin Wargo spoke in rebuttal. Ms. Wargo said they had never been issued or received a covenant of any kind. They did a title search and received their deed, seal and stamped. She said they have also checked with Cherokee County and they have not received any covenants. Someone put one in their mailbox and with no letter attached. They assumed it came from someone in the neighborhood, but one was not disclosed when they closed on the house. She said they would never have moved in the subdivision because her husband is a contractor and they do have trailers. That is why they moved in a subdivision without a homeowners association. His business is not operated out of their home. He is a contractor with business equipment they have to store. She said they have a four year old daughter and they are very civilized and noise does not come from their home. Mr. Wargo said he works all week and has to do yard work on the weekends and work on your house at then too. There might have been a chain saw, but that would be Mr. Wargo working on his home and yard and not making money from somebody else.

Ms. Mumaugh asked how old the subdivision is. The applicants replied approximately 1990. She asked if they planned to build the garage themselves. They said yes. She asked if they had pictures or would it compliment the home. They said the garage would match the home. She asked if it was causing damage having it in the weather. Applicants answered in the affirmative.

Mr. Taylor said he is concerned with the number of people in the area that have reservation about this. He said he didn't know if they would see more of these things, but in general, the older residential communities that were done greater than two acres they never changed to zoning. It was AG to start and they built them within two acres and there was no reason ever change the thing and certainly in those areas they wanted to promote AG so it doesn't get dissolved into some of these other subdivisions. He said he didn't think the business was a problem due to the nature of the business, but they needed to be cognizant of a residential neighborhood. He thought they needed to think about how to address those things on an official basis within the County.

Vicki Taylor said they had discussed having a residential AG as opposed to the general AG they have now. As it stands today you can have one detached garage, but farm building, barns and well houses, etc., all those are unlimited. She said a detached garage or guest house would be to the side or the rear, but barns and farm outbuildings could be in the front yard.

Mr. Jerguson asked if the house is truly 100 feet from the road. The applicants answered, yes. Mr. Jerguson said that was highly unusual.

Chairman Hekman said he went by the house and looked at the way the property was shaped and it would be difficult to put this anywhere else. He said the only problem is when you go to the cul-de-sac you are looking straight up the driveway and would be looking at the structure, but adequate screening could solve that problem.

Ms. Mumaugh stated if it complimented the house that would help.

Chairman Hekman said he too was concerned about the number of people that found this objectionable, but when he drove there he did not think this would be a detriment to the neighborhood.

Mr. Jerguson said one of the persons said if this variance is approved he would request year round screening.

Mr. Jerguson made a motion to approve subject to a 1,200 square foot garage, one story, architecture to be similar to the home and 75 percent year round screening from the road and the property owner to the west, parcel 17. Ms. Mumaugh seconded. Motion passed unanimously 4-0.

Case #05-04-017V Steven Austin requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 9' to allow a 41' front building setback instead of the required 50' front building setback. The property is located at 200 Prospector Way in Land Lot 339 of the 3rd District and further described as Cherokee County Tax Map 03N14, Parcel 073.

Vicki Taylor gave Staff recommendation that this is a very minor encroachment, relatively speaking. Only a small section of the house is 41± feet from the property line, the remaining closer to 50 feet. The home directly across the street faces Dawson Creek Drive and the structure is still some 64 feet from the edge of pavement. Staff recommends this petition be approved.

Steven Austin represented this case.

No one spoke in favor.

Linda Flory spoke in opposition and said she had a petition she would give the Board because they couldn't get it to anyone before hand because the sign had the date of the 17th on it. Vicki Taylor responded she had verified sign read for the 7th and that the sign said April 7. Ms. Flory said there was a large space between the i and L. Ms. Flory stated that out of the 34 homes she has 27 signatures in opposition to this variance. She said the home in its present location will have a negative affect on their property values. Ms. Flory stated the lots are at least two acres and most homes are setback more than the required distance. Dawson Creek is not a subdivision clustered together and that is why they moved there. They were forced by the County to meet the setbacks so why should this home be given any privileges. This home builder hired their own third party engineer to do their inspections in lieu of having the County inspectors. They should be accountable for their errors and their property values should not be reduced because they did not follow the requirements. They should not have to pay for their mistakes. One other homeowner had their home three feet from the line and didn't ask for a variance. They did the right thing and paid the additional money to have the house moved. The lots in subdivision all have problems and her grading bill was twice what she expected. She said most of the homes are setback between 75 and 150 feet back from the road and has a nice spacious feel when you drive through. She said this house is at least 100,000 dollars lower than any other house in the

subdivision. They are being impacted in that regard. They all had difficulty locating for septic. Basically, if you look at this house compared to the other houses the only conclusion she can draw is that they are putting this house close to the street to save on driveway, save money on grading and other cost in building a house. She asked this variance be denied.

Kathy Polon, 155 Dawson Creek, spoke in opposition and her home is directly across the street from this property. Her concern is that it is setting a precedence for the neighborhood. Her question is why a building permit should have been issued when there was a zoning violation.

Bruce Polon said it was unfortunate that the home was built and wondered if a building permit was issued with the wrong setback. Ms. Taylor said the building permit said 50 foot. Mr. Polon said he didn't know you could have a third party inspection. Mr. Taylor replied it is acceptable because the County inspectors can only come during the day and they may want after hours inspections.

Jason Maynard spoke in opposition in lives adjacent to this property. He was three feet over when he built his house and you guys caught it before he poured the first drop of concrete. His grading cost was approximately 25,000 dollars. He had 110 loads of dirt and it's a very steep lot. All the lots at Dawson Creek are tough. It is very mountainous and that is its appeal. He believed this would be setting a precedence. He said his house appraised for 371,000 dollars. If his house sales for the low two's, he stands to lose a lot of money along with everyone else.

Steve Austin spoke in rebuttal. He said there is also a stream in back of the house and if the house was set any further to the right they would have violated the 60 foot encroachment on the property because of the type of lot it is. It is not a triangle. It's almost like a baseball bat or a paddle. It is the smallest house in the subdivision and just does come in under the covenants of square footage of heated space.

Chairman Hekman closed the public input.

Sean Jerguson asked Mr. Austin if this is his personal residence. Mr. Austin answered, yes. Mr. Jerguson asked if he was a home builder. Mr. Austin answered, no and he was building this home for his wife. Ms. Mumaugh asked if he had built any other homes in the subdivision. Mr. Austin answered, no.

Chairman Hekman asked if the variance is for the encroachment of the entire front. Ms. Taylor said, no. She said most of the house is four foot over and only a portion is nine feet.

Mr. Jerguson asked if he subcontracted the foundation and Mr. Austin said to Bell Foundation.

Mr. Jerguson said he would like more information from the Building Department. He said this is a tough situation because he sympathizes with the home owner as well as the neighbors. He said he doesn't know that he has enough information tonight to make a decision.

Mr. Jerguson made a motion to postpone the case until next public hearing. Seconded by Roy Taylor. Motion tied 2-2, with Chairman Hekman and Amy Mumaugh in opposition.

Chairman made a motion to approve this request. Seconded by Amy Mumaugh. Motion tied 2-2, with Roy Taylor and Sean Jerguson in opposition.

Sean Jerguson made a motion to postpone the case until the next public hearing. Seconded by Roy Taylor. Motion passed 3-1, with Amy Mumaugh in opposition.

Case #05-04-018V Legacy Investment Group requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance in the reduction of the front building setback from 25' to 12.5' on Lots 1-12, 33-35, 52-72, 87-92, 99-104 and 112-115 of Curtis Farm Subdivision. The property is located on Curtis Road in Land Lot(s) 1063 and 1098 of the 3rd District and further described as Cherokee County Tax Map(s) 03N17, Parcel(s) 27 and a part of parcel 29, Tax Map 03N18, Parcel 030.

Vicki Taylor gave Staff recommendation that the homes with a 12.5 foot setback would be 25.5 feet from the edge of pavement. This could promote a sense of neighborhood and would not impede either roadway construction or utilities. However, Lots 35 and 52 may not be suitable for this variance due to the decrease in the lot width at the building line. R-20 zoning in a conservation subdivision requires 75 feet width at the front building line. Even the requested variance would not appear to help Lot 64 or Lot 88. Based upon the topographic map provided, it appears a variance due to topography would be warranted for Lots 5-12, 34, 58 – 69, 88-90, 92, and 113.

Tom Black represented this case.

No one spoke in favor or opposition.

Chairman Hekman closed the public hearing.

Roy Taylor said typically no one is going to complain because no one is living there. He said there is no reason for this application other than bad engineering. It was a bad design. It was done to be able to maximize profit. You could have made it a whole lot nicer if designed correctly in the first place and maybe it wouldn't have permitted as many lots as was drawn on here and even though it has the zoning, it doesn't guarantee anybody that many lots. He thinks it is wrong to allow this just because this has a 25 percent slope because some municipalities say anything over 15 percent is unbuildable and is just not allowed. He sees nothing that falls under the criteria to grant a variance to this.

Amy Mumaugh asked what the minimum lot size is. Mr. Black said the minimum lot width is 75 feet and the minimum lot size is 10,000 square feet.

Mr. Black said there were originally nine chicken houses on this property and it was agreed to in order to do anything to get rid of the chicken houses.

Chairman Hekman said he agreed with Mr. Taylor and thought it was an attempt to put too much into too little space.

Chairman Hekman made a motion to deny the request. Seconded by Roy Taylor. Motion passed 3-1, with Sean Jerguson in opposition.

Case #05-04-019V Jimmy Turner requesting a variance to Article 23, Section 23.8; Conservation Subdivisions. The applicant is requesting a variance to encroach into the 50' undisturbed conservation buffer 25' for septic lines on Lots 1-7 and 16-22 of Autumn Glen Subdivision. The property is located on East Cherokee Drive in Land Lot(s) 397, 398, 468 of the 15th District and further described as Cherokee County Tax Map(s) 15N26, Parcel 111.

Vicki Taylor gave Staff recommendations that Lot 22 should be dismissed from the requested variance since no part of the perimeter buffer falls within that lot. This site has soil-type conditions, but also some lots are at minimum lot size for this zoning category. The letter of intent does not establish the hardship, therefore, I am awaiting the presentation of the case.

Doug Patten represented this case.

No one spoke in favor.

Donna Curry spoke in opposition. She said she lives at 2492 E. Cherokee Drive and her property backs up to Lots 16 through 22. She said she feels that she has been duped as it because outside the subdivision it said one acre plus lots. When we came before the Zoning and Planning Committee and when we came to the Commissioners meeting it rezoned R-40 and she understood they were to be one acre lots. She contacted one of the Commissioners that says this sounds suspicious the sewer line can cross the buffer, but the septic lines are not allowed in the buffer. If the Commissioner says they aren't allowed, they aren't allowed.

Doug Patten spoke in rebuttal and said he knew the septic lines are not allowed in the buffer and that is the reason for the variance. He said that normally septic lines are not allowed in the buffer because of the trees, but this is a cow pasture and they would do plantings.

Vicki Taylor said she wanted to clarify Article 10 – Buffers. It says if there is no natural vegetation, the developer may go in there and grade and replant using berms, trees or fences. So Mr. Patten will be grading in the buffer it is just to what degree and if he can then put his field lines in there.

Chairman Hekman closed the public hearing.

Chairman Hekman asked if there is an arborist plan. Mr. Patten said he had a copy. The Board looked over these plans with Mr. Black. Chairman Hekman asked if they met the tree ordinance. Ms. Taylor said they did.

Roy Taylor said this is like the case before that is badly designed and you're coming and seeking relief from a bad design. It is really a hard thing for him because you aren't asking relief from real problems and that's what we are here for to find those real problems and this one is only monetary. To sale more lots and not in the spirit of the conversation subdivision. You are not working towards saving the environment, you are not doing less intensive footprint on the ground, which is what a conservation subdivision is about. An undisturbed buffer has nothing to do with trees. An undisturbed buffer is in perpetuity we will have that 50 feet that creates a border to anything your doing. That means the pines that will grow there in a 10 year period would invalidate any septic fields. To put septic fields in the buffer would require it be maintained because you can't have trees or bushes over septic lines.

Chairman Hekman said his concern is the people having homes adjacent to the property that he didn't think even with the plant layout would be sufficiently visually buffered. He thought the only way he could accept this is if there was an 80 percent visual screen and year round for those residents next door.

Sean Jerguson said it is unique because of the positive affect it will have on the Church next door. He explained to Ms. Curry that the subdivision although zoned R-40 has been developed as a Conservation Subdivision and by right the lot sizes may be reduced.

Discussion ensued as to visual screens, the spirit of the Conversation Subdivision and whether those lots could still be developed.

Roy Taylor made a motion to deny. Seconded by Chairman Hekman. Motion passed unanimously 4-0.

Case #05-04-020V Phillip Cochran requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 11' to allow a 39' rear building setback. The property is located at 193 Claude Scott Drive in Land Lot 1053 of the 3rd District and further described as Cherokee County Tax Map(s) 03N23, Parcel 124.

Vicki Taylor gave Staff recommendations that the proposed structure would be buffered by existing heavy vegetation and Staff recommends this petition be approved.

Phillip Cochran represented this case.

No one spoke in favor or opposition.

Chairman Hekman closed the public hearing.

Roy Taylor made a motion to approve. Seconded by Sean Jerguson. Motion passed unanimously 4-0.

Case #05-04-021V Crenshaw Quality Products, Inc. requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of 30' to allow a 20' front building setback. The property is located at 103 Heather Court in Land Lot 319 of the 14th District and further described as Cherokee County Tax Map(s) 14N26 Parcel 068.

Vicki Taylor gave Staff recommendations that the proposed structure would still be some 40 feet from the edge of pavement at its closest point. If possible, some vegetative screen to soften the impact of the projecting corner would be desirable. Staff recommends this petition be approved.

No one represented this case.

No one spoke in favor or opposition.

Chairman Hekman closed the public hearing.

Mr. Taylor said he is very familiar with this property and thought the industrial park owner might have comments, but asked he had submitted anything. Vicki Taylor replied, no.

Mr. Taylor said if they could meet the building department's criteria for getting this stuff taken care of and engineering detention area for drainage. He said he saw no reason not to allow this.

Sean Jerguson made a motion to approve. Seconded by Roy Taylor. Motion passed unanimously 4-0.

Case #05-04-022V Yeon Soo Kim & Mira Kim requesting a variance to Article 7, Table 7.1A; Minimum District Development Standards. The applicant is requesting a variance of to reduce both front building setbacks to 25'. The Cherokee County Zoning Ordinance requires 50' along Bells Ferry Road and 65' along Bascomb Carmel Road. The property is located at corner of Bells Ferry Road and Bascomb Carmel Road in Land Lot 973 of the 21st District and further described as Cherokee County Tax Map(s) 15N05 Parcel 068.

Vicki Taylor gave Staff recommendations that there is a letter from Sams, Larkin & Huff referencing no objection to this variance by the Engineering Department, which would be my primary concern at this intersection. All guidelines of Ordinance No. 2004-Z-001 with respect to building materials and landscaping would still be required. Staff recommends this petition be approved.

Michael Pryor of Sams, Larkin and Huff, represented this case.

No one spoke in favor or opposition.

Chairman Hekman closed the public hearing.

Amy Mumaugh said basically this is her area and she would like to see more landscaping in the parking lot area. More of a visual screening and more plantings in the parking lots to look more village type like they are suppose to be pushing for on Highway 92 to make them more desirable and appealing.

Vicki Taylor explained that is the intent of Ordinance No. 2004-Z-001 and explained the landscaping requirements. Also, the tree ordinance requires plantings for every five parking spaces she believes.

Roy Taylor said if we are offering relief it would be within our bounds to ask for.

Discussion ensued as to the topography of the property. Roy Taylor said the detention pond was shown at the highest point and that was difficult to understand. He asked if they were pumping to the detention pond and discussed its placement or even under the parking lot. Chairman Hekman suggested the detention pond have adequate screening.

Ms. Mumaugh asked if the curb cuts had been approved. Vicki Taylor said it would go to Technical Review. Chairman Hekman said there would have to be an accel/decel lane.

Amy Mumaugh made a motion to approve with landscaping at the detention pond, preferably grass if possible at 100 percent screening from Bells Ferry Road and Bascomb Carmel Road, some extra landscaping in the parking area and road front, maybe some crepe myrtle trees, with a 125 percent tree density plan above the tree ordinance. Seconded by Chairman Hekman. Motion passed unanimously 4-0.

Case #05-04-023V Foresite, LLC requesting a variance to Article 7, Section 7.7-27C(2)(a); Telecommunication Towers. The applicant is requesting a variance to reduce the tower setback to 67.8' on the west property line. The Cherokee County Zoning Ordinance requires a 195' building setback for this location and due to the tower height being 195' tall. The property is located at 869 Knox Bridge Hwy in Land Lot 011 of the 22nd District and further described as Cherokee County Tax Map 22N06, Parcel 053.

Vicki Taylor gave Staff recommendations that telecommunication towers are difficult to site and more difficult to screen. Based upon the submitted documentation it appears ForeSite had done their due diligence to attempting to meet their requirements as well as all Federal Communications Commission requirements. Absent from any communication from the impacted property owners and acknowledging the landscaping requirements of the Zoning Ordinance, Staff recommends this petition be approved.

Doug Barker represented this case. He said he works for SBA Network Services, Inc. representing Foresite, LLC. He said they are direct competitors, but they had come to an agreement when they realized they were looking for the same tower location to the west. He said that Foresite would be the tower owner and SBA would collocate. They had located property not

in a residential area. They had chosen not to put a light on this tower because of surrounding properties. He explained the location of the tower was to be at the height needed without a light.

Billy Edmondson, Senior Pastor of Sutallee Church, said he had been there 14 years and has owned property in Sutallee since 1976. In 1991 they had 15 members and they were meeting in a basement there and they had five acres and since then they had been able to purchase 19 acres and their membership now is a little over 500 members. A lot of their people live there or travel to the west and they have a dead zone there. One of the problems is that some of their deacons that live just west of the church have no cell phone coverages at all. There are little league teams that use the ball field the church has, it is used as a polling place during elections, there are neighborhood watch meetings held there. He said he has to be able to get important emergency calls to come to hospitals, etc. He said the property is considered to be for the community. He said the members had voted unanimously for the tower. He said he would appreciate the Boards consideration in approving this variance.

Michelene Bryant spoke in opposition. She said she lives directly across the street from the property at 708 Knox Bridge Highway and have been living there about 18 years now and have a five acre lot. She said the house was built in 1985 and they have horses. She said the tower would be in her direct view of the house and front porch, barn and riding arena. She had spoke with an appraiser had he had told her the tower could affect her property value from 10 to 20,000 dollars, to the point of possibly loosing a sale. This is a major concern for her. She said she has Cingular Wireless and she has no problem with her coverage. She travels to Cartersville and Tennessee and she has never dropped coverage. The area she gets dropped in is Univeter Road. She said she didn't understand what the issue is there. They also have probably 5.7 miles west of them a cell tower that exists at Fields Landing. At first when they realized a tower was going in they were glad for the church to receive compensation for it; however, when they started looking into it and found it could affect the value of their property they then thought they needed to speak up in opposition of it. If it is just a setback line issue then leave it at 195 feet or move it back on the church property so they have to look at it more than she.

Marvin Bryant spoke in opposition and reiterated Mrs. Bryant's comments.

Mr. Barker said as far as the tower at Field's Landing that is a tower that Cingular Wireless is collocating on. He said he didn't know about Verizon Wireless. He said that they are not providing overlapping coverage. There are very clear dead zones and he has Cingular Wireless and there are several dead zones when you dip down in areas and there is definitely a need for coverage in the area by the fact that two carriers are already going on the proposed tower. He said the church will be receiving compensation and they do target non-profit organizations to spread around the community. He said if the tower is moved back the hill drops off and that is not the height they need. They need to be literally on top of the hill to avoid a light. He respectfully requested approval of the variance.

Chairman Hekman closed public comment.

Chairman Hekman said he will ask the question he has with all towers regarding the fall area. He said he had a concern of the property owners to the west, but there are no comments from that

property owner and without express approval from them, he has a concern. There is also a concern for lighting.

Roy Taylor said he is concerned about the light as well because everybody sees that light. If we move forward there are two things he would like to see. One is a guarantee there is no light and that we at least look at the possibility of one of the alternative towers, like a pine tree and try and blend in.

Amy Mumaugh agreed with the alternative tower. She said the alternative tower on Kellogg Creek looks very nice.

Roy Taylor said the one on Union Hill is well over a 100 feet and everybody knows it's a cell tower, but it's okay.

Sean Jerguson asked the Pastor that there is a cream colored structure sitting back off the road up the hill and asked what that is. Chairman Hekman said it looked like a mobile home. Mr. Jerguson said it looks like the mobile home would be higher up than the base of the cell tower. Discussion ensued as to the fall zone and placement of the tower and if alternative spots along the ridge could be examined.

Mr. Jerguson made a motion to postpone this request until May in order for Foresite to examine alternative placement on the ridge and to bring realistic alternative structures for the Board to look at. Seconded by Roy Taylor. Motion passed unanimously 4-0.

Other Items

Approval of March 1, 2005 Minutes.

Changes to the minutes were discussed those being:

Case No. 05-03-012V – Woodstock Property Company, LLC

Page 5 typo 5th paragraph change Mr. Taylor asked if Dr. King owes the adjacent property. Should read owns the adjacent property.

Same case the motion should read:

Roy Taylor made a motion to approve this application with 1) Staff recommendation of a 6 foot privacy fence along the west property line and 2) from the northwest corner south for 100 feet become the 40 foot undisturbed buffer be a 40 foot landscape buffer for a grassed detention pond and after that point reduced to 10 feet. Seconded by Sean Jerguson. Motion passed 4-1, with Greg Elder in opposition.

Sean Jerguson made a motion to approve the minutes with above listed changes. Seconded by Roy Taylor. Motion passed unanimously 4-0.

Sean Jerguson made a motion to adjourn. Seconded by Roy Taylor. Motion passed unanimously 4-0.

Meeting adjourned at 10:30 p.m.