

**BOARD OF ZONING APPEALS  
MINUTES  
JULY 12, 2012**

**VIRGINIA**

A public hearing of the Board of Zoning Appeals for Amherst County Virginia was held at 7:00 PM, on Thursday, July 12, 2012 in the Board of Supervisors Room located in the Amherst Administrative Building on 153 Washington Street, Amherst, Virginia.

**MEMBERS PRESENT:** George Banton, Chariman  
George Wise, Vice Chairman  
Joyce Coleman  
Harry Stinnett, Jr.

**MEMBERS ABSENT:** Barbara Woody

**STAFF PRESENT:** Jeremy Bryant, Director of Planning /Zoning Administrator  
Matthew Rowe, Planner/Assistant Zoning Administrator  
Stacey Stinnett, Planning/Zoning Administrative Assistant

**IN RE: CALL TO ORDER**

Chairman Banton called the meeting to order at 7:00 PM with a quorum present to conduct business.

**IN RE: APPROVAL OF AGENDA**

The agenda was amended by allowing all public hearing cases to be heard first and then move item (3) three "Election of Officers" between items (5) five and (6) six.

**Motion:** Coleman I move that the agenda be amended by allowing all public hearing cases to be heard first and then move item (3) three "Election of Officers" between items (5) five and (6) six.

**Second:** Wise  
**The motion was carried by a 4-0 vote.**

Chairman Banton proceeded to explain the rules of procedure for the public hearing. Chairman Banton stated that each person wishing to speak, except for the applicant,

would be allowed a total of three (3) minutes, and must state their name and physical address for the record. Chairman Banton also stated that the applicant has the right to withdraw the application at any time and wait for a full Board. Chairman Banton stated that any aggrieved person or persons may appeal any decision of the Board of Zoning Appeals within thirty (30) days to the Circuit Court, in accordance with the Code of Virginia.

**IN RE: PUBLIC HEARING - VARIANCE REQUEST BY GLOBAL TOWER PARTNERS # 2011A-02.**

#2011A-02 A variance request from Section 919.04.B of the Zoning & Subdivision Ordinance to decrease the required tower setback from one-hundred and ninety-five (195) feet to approximately sixty (60) feet, in order to construct a personal wireless service facility. In accordance with Section 1006 of the Zoning & Subdivision Ordinance of Amherst County, Global Tower Assets, LLC, has submitted a formal variance application to request a variance from Section 919.04.B of the Ordinance. The variance request is to decrease the required tower setback from one-hundred and ninety-five (195) feet to approximately sixty (60) feet, in order to construct a monopole cellular tower located on railroad property within the M-1 Industrial District. The tower would consist of a one-hundred and ninety-five (195) foot tall monopole wireless communication tower with an attached four (4) foot tall lightning rod; resulting in an aggregate tower/structure height of one-hundred and ninety-nine (199) feet. The proposed 0.1626 acre leased area is located within the Norfolk Southern Railroad property at the intersection of Cedar Gate Road and Iron Bridge Road. The applicant applied for and requested a withdrawal on December 5, 2011 of a previous application that requested a variance from not only the setback but also the tower height. Since the applicant's first application, the County has adopted a new wireless communication facilities ordinance with less restrictive regulations and the Board of Supervisors has publicly made their wishes known to improve wireless infrastructure and coverage within the County. The applicant conducted a public information session for the previous application for adjacent and nearby property owners on October 11, 2011. There appears to be no substantial changes in the current application compared to that of the previous application.

**STAFF REPORT:** Mr. Rowe gave the staff report and stated that the Planning Commission recommended approval unanimously at the Planning Commission Meeting held on Thursday, July 5, 2012. However, the Planning Commission did make a recommendation to include an additional condition which states: "that Southern Railroad acknowledges the fact that if this tower were to fall that there would be a possibility it could fall across the railroad." Should the Board of Zoning Appeals approve this request; Staff recommends the following conditions:

1. The Variance is granted for the lease area and property identified as "Southern Railroad Company Property Located South and East of the Intersection of Cedar Gate Road and Iron Bridge Road, Found within the Elon Magisterial District, in Monroe, Virginia, on County Tax Map Grid 137".
2. The Variance is granted to allow a one-hundred and ninety-five foot tower to have a minimum setback of approximately sixty (60) feet.
3. The tower and its associated facilities shall be located as given in the "Site Plan" for Global Tower Assets, LLC (Global Tower Partners), certified by William Panek and dated July 21, 2011.
4. The granting of this variance shall not be construed to vest in the applicant a right to the variance until all necessary local, State and Federal plan application, review and approval processes have been completed.
5. This approval may be revoked by the County of Amherst or its designated agent for failure by the applicant or its assigns to comply with any of the listed conditions or any provision of Federal, State or local regulations.
6. Southern Railroad acknowledges the fact that if this tower were to fall that there would be a possibility it could fall across the railroad.

Chairman Banton opened the public hearing.

**PROPONENTS' ARGUMENTS:**

Mr. Lynn Kerner, representative with Global Tower Assets spoke in favor of the request and answered the Board of Zoning Appeals questions. Mr. Kerner stated that Global Tower Assets has acquired the rights of Norfolk Railroad Suffolk assets and towers on railroad property in that area. Mr. Kerner stated that referencing the "Fall Zone Letter" all towers are designed to crumple rather than fall and that many of these towers are in more dense localities such as Richmond.

**OPPONENTS' AGRUMENTS:**

There were none.

There being no further speakers Chairman Banton closed the public hearing.

**BOARD OF APPEALS DISCUSSION:**

Mr. Wise was not opposed to wireless towers; however, he did not see this request as a hardship.

Ms. Coleman supported the request and stated that the hardship was within the terrain



of the property.

Mr. Stinnett supported the request and stated that wireless service was an issue in Amherst County. Mr. Stinnett stated that by having the conditions including the Planning Commission's Condition number six (6); he felt that the County could be protected from any liability.

Mr. Banton felt that there were potential sites on this property that would meet the setbacks.

Mr. Kerner stated that he could research other possible locations that would meet the variance.

**BOARD OF ZONING APPEALS ACTION:**

**Motion:** Coleman                      I move to approve variance request  
2011A-02 Global Tower Partners with  
conditions as recommended by staff in the  
staff report.

**Second:** Stinnett  
**The motion failed for lack of majority vote 2-2 vote (Wise, Banton)**

Mr. Kerner stated that he could research other possible locations that would meet the variance.

**Motion:** Wise                              I move to defer this case until the next  
regularly scheduled Board of Zoning  
Appeals meeting.

**Second:** Coleman  
**The motion was carried by a 4-0 vote.**

**IN RE: PUBLIC HEARING - VARIANCE REQUEST BY JESSIE PACYGA # 2011A-01.**

Mr. Rowe presented Case # 2012A-01 to the Board of Zoning Appeals, in which Jessie Sue Pacyga requested a variance from Section 804.d of the Zoning & Subdivision Ordinance to reduce the rear property line setback from fifty (50) feet to approximately twenty-eight (28) feet to legitimize an existing, non-conforming porch and deck that is attached to the rear portion of an existing single family dwelling. The property is identified as tax parcel number 79-A-28A and having the physical address of 530 Sardis Road.

**STAFF REPORT:**

Mr. Rowe presented the Staff report, which stated at its conclusion that:

"Should the Board of Zoning Appeals approve this request; Staff recommends the following conditions:

1. The variance is granted for Tax Map Parcel No. 79 – A – 28A to reduce the rear property line setback from fifty (50) feet to approximately twenty-eight (28) feet to legitimize an existing, non-conforming attached deck and porch structure(s).
2. The granting of this variance shall not be construed to vest in the applicant a right to the variance until all necessary local, State and Federal plan application, review and approval processes have been completed.
3. This approval may be revoked by the County of Amherst or its designated agent for failure by the applicant or its assigns to comply with any of the listed conditions or any provision of Federal, State or local regulations."

Mr. Rowe stated that the Planning Commission reviewed the case at its July 5, 2012 meeting and decided to not make a formal recommendation on the matter. Mr. Rowe informed the Board that the Planning Department had received a letter from Stephen Eubank, attorney for the applicant, dated July 12, 2012, which requested that the public hearing be deferred until the next regularly scheduled meeting and that the applicant, and their attorney, requested that the letter's request to defer the public hearing be withdrawn. Mr. Rowe further clarified the matter by stating that the applicant and their attorney wished for the public hearing to occur as originally advertised for and scheduled. Mr. Rowe also informed the Board that the Planning Department had received a letter in opposition to the request which was provided to the members of the Board.

Mr. Rowe asked the Board if they had any questions for Staff regarding the report and case. Member Butch Stinnett informed Chairman Banton that he wished to recuse himself from the case since he had business dealings with the applicant and had retained legal services from the applicant's attorney's office. Chairman Banton allowed Mr. Stinnett to physically leave the table and informed him that he would not be permitted to take part in any further discussion regarding the matter.

Ms. Coleman asked Staff for clarification regarding Mr. Eubank's request to withdraw his letter's request. Staff deferred to Mr. Eubank and requested that Mr. Eubank formally request in person that the letter's request be withdrawn. Mr. Eubank affirmed the request to withdraw the letter and proceed with the public hearing.

Chairman Banton asked the applicant if they would like to address the Board regarding

their request. Mr. Eubank spoke on behalf of the applicant and described how Ms. Pacyga acquired the property from Mr. Wayne Burley and his wife. He discussed the items described in Staff's Notice of Violation by referring to a survey completed by Robert Morris, surveyor. He stated that removing the porch would cause the applicant to alter the roof line of the entire house since it is integrally attached to the home. He informed the Board that Staff's Notice of Violation did not consider the dog ramp or the temporary greenhouse feature to be in violation. He also mentioned the permit that was issued for the large shed, which as permitted is allowed to remain closer to the rear yard than the requested porch and deck structures. Mr. Eubank stated that in 2011, Mr. Burley deeded the surrounding property, tax map parcel number 79-A-28, to Jean Mauro (who was Jean Burley at the time). He addressed several of Staff's comments found in its report, such as acquiring the property in good faith, the character of the area, and the physical constraints of the property. He agreed with Staff's assessment that it was a unique situation to have one smaller parcel that is entirely surrounded by a single larger parcel that exceeds 10 acres in size; causing the surrounded property to be affected by the more stringent yard setbacks. He showed several photographs of the area and highlighted the dense woods beyond the rear property line, and detailed a 2007 appraisal which showed that the deck and porch had been constructed at that time. He closed his comments by stating that Ms. Pacyga had willingly complied with all cited structures in Violation that could be moved, but that she was unable to comply with the violation concerning the porch and deck since it was integrally attached to the home.

Mr. Eubank asked the Board if they had any questions for him or Ms. Pacyga. Chairman Banton asked if Mr. Eubank had Mr. James C. May's (Jr.) plat dated 2006. Mr. Eubank responded that at the date of the plat, nothing had been constructed. Mr. Banton stated that he was asking about the plat because the appropriate setback was clearly shown on the given plat.

Mr. Wise asked Mr. Rowe which zoning permit was for the house. Mr. Rowe responded that the permit from 2006, which was provided to the Board, was for the dwelling. He stated that the permit was for both the dwelling and the large storage shed. The permit was approved by the Planning Director.

Ms. Coleman asked Mr. Eubank if the lot was already in existence when Ms. Pacyga obtained ownership and title. Mr. Eubank stated that the lot was created when it was deeded to Ms. Pacyga.

Chairman Banton opened the public hearing and asked for speakers in favor of the variance request.



### **PROPONENTS' ARGUMENTS:**

Jessie Sue Pacyga, 530 Sardis Road and owner/applicant, spoke in favor of the request. She wished to clarify the 2006 zoning and building permits. She stated that she went into the Planning Department in 2006 and was directed to draw a box on the sketch showing the proposed location. She stated that none of the existing planning staff was hired or working in the office at the time. She said that she did not intentionally do anything wrong, and that she believes that it is an attack on her from an adjacent neighbor.

Wayne Burley, 591 Burley Hollow Road, spoke in favor of the request. He stated that he gave Ms. Pacyga the property and that he used to own the larger surrounding property which he kept bush-hogged and maintained. He stated that he assisted Ms. Pacyga through the dwelling development process, and that he did not know that they had done anything wrong at the time. Mr. Wise asked Burley how he subdivided the land to create the smaller parcel. Mr. Burley stated that Mr. James C. May, Jr., surveyed it, and that he told Mr. May to take what he needed to create a buildable area. He stated that the contractor hit rock when constructing the foundation for the home and the original location of the dwelling was adjusted.

Linda Ianuzi, 155 Mayflower Lane, spoke in favor of the request. She stated that they have lived as neighbors to Ms. Pacyga, and wanted to inform the Board of Ms. Pacyga's integrity and willingness to help. She also stated that past the rear property line the adjacent property quickly slopes downward and creates a difficult scenario for future building.

Jim Ianuzi, 155 Mayflower Lane, spoke in favor of the request. He inquired about the Board's process. He stated that the people who owned the property behind Ms. Pacyga's property could give a small portion of land to alleviate the hardship. Mr. Rowe clarified the matter by stating that a reconfiguration involving parcel 79-A-28 could alleviate the variance request, however, such a reconfiguration would require the consent from the owners of parcel 79-A-28. Mr. Rowe proposed that the Board ask Ms. Pacyga if she had attempted to contact the owners of parcel 79-A-28 to determine if they were willing to reconfigure the rear property line to assist Ms. Pacyga in resolving her hardship. Mr. Eubank stated that he did not believe the adjacent property owner was willing to accommodate such a request. He stated that they did not formally contact the adjacent property owner.

Ms. Coleman asked Mr. Burley if the house had been affected by rock. Mr. Burley responded that he had been informed of the rock issue by the builder.

Howard White, 800 Sardis Road, spoke in favor of the request and is the brother of the applicant. He stated that he never remembered seeing any property markers during construction of the dwelling. He stated that Ms. Pacyga met the intent of the

ordinance, and that there are no other homes close to her property.

Mr. Rowe informed Chairman Banton that the Planning Department had not received any additional correspondence in favor of the request.

Chairman Banton then asked if anyone present wished to speak in opposition to the request.

#### **OPPONENTS' ARGUMENTS:**

George Mauro, 370 Sardis Road, spoke in opposition to the request. Married to the adjoining property owner (of parcel 79-A-28) Jean Mauro (formerly Jean Burley). Mr. Mauro referenced the provided letter in opposition. He stated that everyone should have known where the property line was located, since Mr. James C. May, Jr., had staked and marked the lines. He stated that Mr. May was able to easily find the pins when the adjoining was resurveyed. He addressed why the steps and ramp were temporary in nature as addressed in Staff's Notice of Violation. He informed the Board that the future use of Ms. Mauro's land is unknown and that she may develop it in the future. He explained the differences between when and why the surveys were completed by Mr. May and Mr. Morris.

Ms. Coleman asked about the approval of the smaller shed. Mr. Rowe addressed the question, stating that the County Attorney had issued a memorandum declaring that the 2006 permit was issued appropriately, based upon good merit and was not germane to the case. He stated that the approved permit was not legally considered to be a variance.

Jean Mauro (formerly Jean Burley), 370 Sardis Road, spoke in opposition to the request. She stated that she did not know how she was going to use her property and that the granting of the request would be a detriment to her and her property. She stated that she was not aware of any rock issues, and asked that the variance not be granted.

Mr. Rowe informed Chairman Banton that the Planning Department had received one letter in opposition from Jean Mauro (formerly Jean Burley), that had been provided to the Board.

Chairman Banton asked the applicant if they had any rebuttals or additional information that they would like to provide. Mr. Eubank, attorney for the applicant, stated that the request is for a distance that is further away from the rear property line than a permitted shed and other structures. He described the difficulty of removing the deck and porch since they are integrally attached to the dwelling and would affect the entire roof line of the home. He stated that he believes that there is a hardship present that is unique, being that the property is surrounded by one single property in excess of 10



acres and the presence of rock on the property. He further stated that the granting of the variance would not change the character of the area and that the adjacent property was affected by steep topography. He expressed that Ms. Pacyga has been more than willing to address the other outstanding items.

There being no further speakers Chairman Banton closed the public hearing.

#### **BOARD OF APPEALS DISCUSSION:**

Mr. Wise asked Staff the process of getting zoning and building permit approvals; mainly, if Staff physically checks setbacks. Mr. Rowe explained the process, stating that the applicant comes in and Staff determines the affected property's zoning, if the proposed use is permitted and then the applicable setbacks for that zoning district. Staff then requires a sketch, if constructing residential structures, from the applicant showing the location of the proposed structure and that all setbacks are met. The applicant is required to sign the zoning permit, which states that the information provided by the applicant is accurate and true. He stated that in rural locations, such as Amherst County, it is common for Planning Departments to not require formal as-built surveys. Once approved, the applicant is able to apply for and obtain a building permit. Staff is not able to determine the actual location of property lines in the field, since Staff is not qualified as being surveyors.

Mr. Wise asked Ms. Pacyga if she believed that once she received approval for all permits that she had accomplished all required tasks. Mr. Pacyga stated that was the case. She stated that the contractor was supposed to take care of all details.

Mr. Wise asked Staff why there is no issue with the permitted large shed and yet there is an issue with the attached deck and porch. Mr. Rowe explained that the large shed is allowed to remain, in logic, due to there being conflicting language associated with accessory structures; as was determined by the County Attorney in her memorandum. Such conflicting language does not exist when dealing with principal structures. Mr. Rowe read the requested use of the 2006 zoning permit and the associated setbacks.

Ms. Coleman stated that it seems that Ms. Pacyga relied on 2 things: Information from the original property owner, Mr. Wayne Burley, and an affirmative action from the local government. Mr. Wise corrected Ms. Coleman's statement, stating that the governmental action was taken based upon the information provided by the applicant, Ms. Pacyga.

Ms. Coleman requested that the Board of Zoning Appeals take a 5 minute recess. Chairman Banton accepted the request and the meeting was recessed at 8:52 p.m., with all members remaining in the Board room during that time.

At 8:57 p.m., Chairman Banton called the meeting back to order and continued with Case # 2012A-01, Jessica Sue Pacyga.

Mr. Wise informed the Board that he believed that this case was a self inflicted hardship and stated that he did not believe that they could legally grant the variance request.

Ms. Coleman stated that she distinguished this case from a previous case, Unroe (case # 0702-VAR-001), since Ms. Pacyga had applied for and had obtained all necessary permits. She further stated that she disagreed with Ms. Mauro that the granting of the variance would be a substantial detriment to Ms. Mauro's property. She expressed her frustration regarding the mean spiritedness of the case, but stated that the Board must strictly follow the law. She reaffirmed that the Board could not create law. She stated that the only way to resolve this issue is to potentially defer a decision on the case until the next regularly scheduled meeting, and for Ms. Pacyga to formally request that Ms. Mauro (formerly Jean Burley) work with her to successfully complete a reconfiguration of the rear property line to address the variance request for the attached deck and porch.

Chairman Banton stated that the Board could still potentially take action and that the reconfiguration option has and will always be an option to address the violation issues. He also stated that the main issue is that an undue hardship cannot be considered if it was self inflicted.

#### **BOARD OF ZONING APPEALS ACTION:**

**Motion:** Wise      Motion to deny the variance request and Case # 2012A-01, Jessica Sue Pacyga, for a variance from Section 804.d of the Zoning & Subdivision Ordinance to reduce the rear property line setback from fifty (50) feet to approximately twenty-eight (28) feet to legitimize an existing, non-conforming porch and deck that is attached to the rear portion of an existing single family dwelling on property that is identified as tax parcel number 79-A-28A and has the physical address of 530 Sardis Road.

**Second:** Banton

**The motion was carried by a 2-1 vote. (Wise, Banton)**

The motion for denial of the variance request was approved by a majority vote of 2-1. Mr. Rowe explained the appeal process to the applicant and the audience in attendance. He also stated that the applicant would be promptly receiving a Board of Zoning Appeals action letter, also giving the appeal process.

**IN RE: ELECTION OF OFFICERS:**

**Chairperson Nominations-**

**Motion:** Wise      Motion to nominate George Banton to serve as  
Chairman of the Board of Zoning Appeals.

**Second:** Coleman

**The motion carried by a 3-0 vote. Mr. Banton abstained.**

**Vice Chairperson Nominations-**

**Motion:** Coleman      Motion to nominate George Wise to serve as vice  
Chairman of the Board of Zoning Appeals.

**Second:** Stinnett

**The motion carried by a 3-0 vote. Mr. Wise abstained.**

**Planning Commission Secretary Nominations-**

**Motion:** Wise      Motion to nominate Jeremy Bryant, Planning  
Director, to serve as secretary for the Board of  
Zoning Appeals.

**Second:** Coleman

**The motion carried by a 4-0 vote.**

**IN RE: OLD/NEW BUSINESS:**

There was discussion regarding the status of the O'Reilly and Childrey legal cases.

There was discussion regarding the new Sign Ordinance that will go to the Planning Commission next week for a public hearing and then will be brought forth to the Board of Supervisors as early as August.

There was a brief discussion about the progress the Business Taskforce has made.



**N RE: APPROVAL OF MINUTES FOR FEBRUARY 27, 2012**

**BOARD OF ZONING APPEALS ACTION:**

**Motion:** Wise                      Make a motion to approve the minutes for  
February 27, 2012.

**Second:** Stinnett

**The motion was carried by a 4-0 vote**

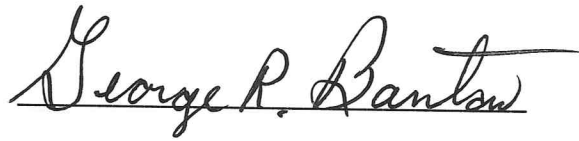
**IN RE: ADJOURNMENT**

**Motion:**              Wise              I make a motion to adjourn the meeting.

**Second:**              Stinnett

**The motion was carried by a 4-0 vote.**

There being no further business to discuss, the meeting was adjourned at 9:18 pm.

A handwritten signature in cursive script, reading "George R. Bantow". The signature is written in dark ink and is positioned above the title "Chairperson".

Chairperson

/ss/8.16.12