

LAKE COUNTY PLANNING AND ZONING ANALYSIS VARIANCE REQUEST



Board of Adjustment

LAKE COUNTY
FLORIDA

February 11, 2016

VAR-16-02-1	Case Manager: Janie Barrón, Associate Planner	Agenda Item #2
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REQUESTED ACTION: The applicant is requesting variances from **Lake County Land Development Regulations**, Section 3.13.09(B) (1) & (2), to allow a camouflaged wireless communications tower to be off-centered within the boundaries of the property recognized as the parent parcel on the official zoning map and to maintain a setback less than the minimum required 100-feet from the northern and western property lines.

- Site Location and Information -

Subject property shown in red



Property Posted: February 1, 2016

Owners	Jeffery Layne Hester and Judson Earle Hester
Applicant	Mary D. Solik, Esquire
Address of Property	1329 State Road 44, Leesburg
General Location	North side of State Road 44, just west of Executive Boulevard
Size	0.98 acres
Alternate Key	1491967
Future Land Use (FLU)	Urban Low
Zoning District	R-6 (Urban Residential District)
Overlay Districts	N/A
Joint Planning Area	N/A
ISBA	N/A
Flood Zone / FIRM Panel	AE and X-unshaded / 0308E
Commissioner's District	District 1, Sullivan

-Land Use Table-

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
North	Urban Low	A (Agriculture)	Residence
South	Industrial	LM (Light Industrial)	Business
East	City	City	City
West	Urban Low	R-6 (Urban Residential)	Vacant

-ANALYSIS-

The applicant is requesting variances from Lake County Land Development Regulations, Section 3.13.09(B) (1) & (2), to allow a camouflaged wireless communications tower to be off-centered within the boundaries of the property recognized as the parent parcel on the official zoning map and to maintain a setback less than the minimum required 100-feet from the northern and western property lines.

The parcel is zoned R-6 (Urban Residential) with an Urban Low future land use category. The parcel is currently vacant and contains approximately 0.98 acres. A portion of the property lies within the 100-year flood zone designated as flood zone "AE" and contains wetlands, which are indicated as the top of bank.

The proposed tower will be located 40 feet from the northern property line, 100 feet from the southern property line, 70 feet from the western property line, 165 feet from the eastern property and approximately 56 feet from the jurisdictional wetland line (Exhibit "A"); the wetland area is located on the east side of the property.

The **intent** of the Code (Table 3.02.05) is to ensure the adherence of safe distances between structures and right-of-ways.

The applicants submitted the following reasons as proof of **meeting the intent of the Code**:

"The 100' setback requirement in the Code results in a minimum lot size for a tower of 40,000 square feet. Verizon Wireless was unable to find a willing landlord with property in the search area that met this size requirement as well as other residential separation requirements. Verizon Wireless was able to reach a lease agreement with the Hester's for the subject property and elected to utilize a camouflage application so as to meet offsite residential separation requirements. The Hester parcel, however, is not large enough to meet the 100' setback requirement from all property lines. The proposed location of the Monopine Tower meets the 100' setback requirement from the south and east property lines.

The need for relief from the centering on the parcel and 100' property line setbacks requirement is due to two factors. First is the existence of an old borrow pit located in the northeast quadrant of the subject property. As the enclosed Site Plan shows, centering the tower on the parcel places the tower on the edge of the borrow pit and places the tower inside the 100' setback required from the south property line, creating the need for an additional variance. Because of the substantial foundation that must be built to support the tower, a separation requirement from the previous excavation of the borrow pit is necessary to meet geotechnical standards. We have now learned that the old borrow pit is classified as a wetland. There is a code required 50' setback from wetlands. The proposed location of the tower to the northwest of center meets the geotechnical requirements and wetland setbacks. The Hester's also own the property to the west and north so no undue burden is shifted to a third party property owner."

The applicant submitted the following as proof that the application of the Land Development Regulations would create a **substantial hardship or would violate principles of fairness**:

"The purpose of the LDC code is to protect adjacent property owners from potential adverse impacts of proximity to telecommunications towers. Impacts are aesthetics and safety related. Verizon is proposing a camouflage tower so the aesthetic impact is not affected by the tower placement. There are no habitable structures on the property to the west or north so no safety issues are raised by the tower placement. Once again the adjacent property owners to the north and west are the same owner who has consented to placement of the Monopine on the subject property. No offsite third party property owners are adversely affected by these reduced setbacks."

FINDINGS OF FACT: Staff has reviewed the application for this variance request and found:

1. Land Development Regulation, Section 14.20.01(5) indicates that construction shall take place where buildable area exist out of the flood-prone area and the off-centering of the tower will comply with this section; and
2. Land Development Regulation, Section 6.01.04(A) indicates that principal structures, structures, building, and impervious surface, excluding water dependent structures, shall be located at least fifty feet (50') from the ordinary high water line, mean high water line, or jurisdictional wetland line, whichever is further landward and the tower will comply with this section; and
3. The variance would reduce the north line setback and establish a setback of fifty-five feet two inches (55'2") for the tower; and
4. The variance would reduce the north and west line setback and establish a setback of seventy feet (70') for the tower; and

CONDITIONS:

1. All structures to include but not limited to tower, cabinets must maintain a setback of 50 feet from the jurisdictional wetland line.

CONCLUSION:

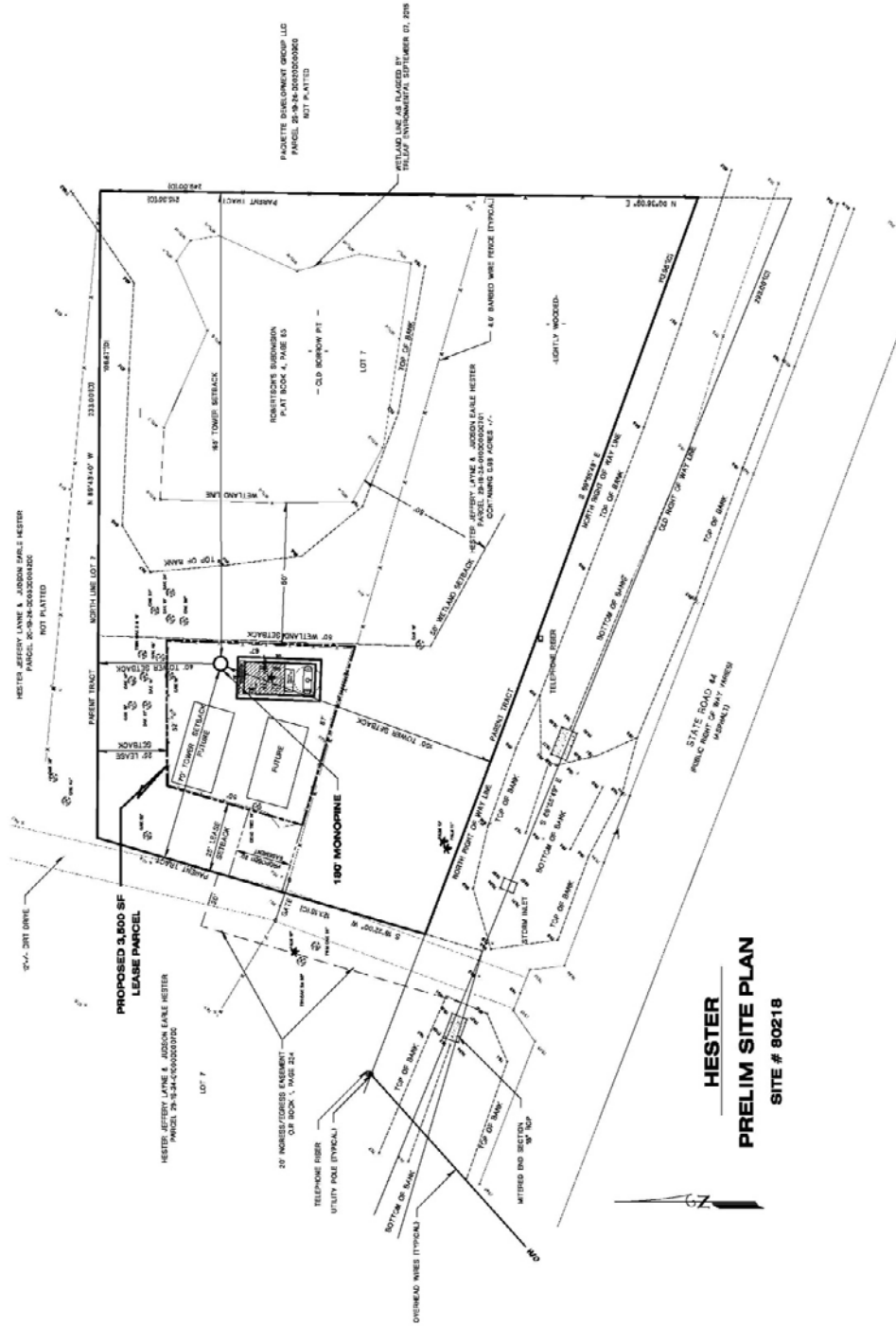
The owners and applicant have submitted proof of meeting the intent of the Code and have shown proof of a substantial hardship or that the application of the Code would violate principles of fairness. Based on the Findings of Fact and Analysis stated above, Staff recommends **approval** of the variances allowing the proposed camouflaged wireless communications tower to be off-centered within the boundaries of the property recognized as the parent parcel on the official zoning map and to maintain a setback less than the minimum required 100-feet from the northern and western property lines. The proposed camouflaged wireless communications tower will be located 40 feet from the northern property line, 100 feet from the southern property line, 70 feet from the western property line, 165 feet from the eastern property and approximately 56 feet from the jurisdictional wetland line as shown on Exhibit "A".

WRITTEN COMMENTS FILED: Supportive: -0-

Concern: -0-

Opposition: -0-

Exhibit "A"



Final Development Order
Jeffery Layne Hester & Judson Earle Hester
VAR-16-02-1

A VARIANCE OF THE LAKE COUNTY BOARD OF ADJUSTMENT AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Mary D. Solik, Esq., (the "Applicant"), requested variances to Land Development Regulation (LDR) Section 3.13.09(B)(1)&(2), to allow a camouflaged wireless communications tower to be off-centered within the boundaries of the property recognized as the parent parcel on the official zoning map and to maintain a setback less than the minimum required 100-feet from the north property line; and

WHEREAS, the subject property consists of 0.98+/- acres and is located in Leesburg, north of State Road 44, in Section 29, Township 19 South, Range 24 East, Alternate Key Number 1491967 and is more particularly described and depicted in Exhibit A; and

WHEREAS, after giving Notice of Hearing on petition for a variance to the Lake County Land Development Regulations, including notice that said variance would be presented to the Board of Adjustment of Lake County, Florida, on February 11, 2016; and

WHEREAS, the Board of Adjustment reviewed said petition, staff report and any comments, favorable or unfavorable, from the public and surrounding property owners at a public hearing duly advertised; and

WHEREAS, on February 11, 2016, the Lake County Board of Adjustment approved the variance for the above property.

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that the Land Development Regulations of Lake County, Florida, be altered and amended as they pertain to the above subject property, subject to the following terms:

Section 1. **Terms:** The County Manager or designee shall amend the Official Zoning Map to reflect the approval of VAR-16-02-1 to allow a camouflaged wireless communications tower to be off-centered within the boundaries of the property recognized as the parent parcel on the official zoning map and to maintain a setback of less than minimum required 100-feet from the north and east property lines (Exhibit B) on the subject parcel described in Exhibit A, in accordance with the following condition:

1. All structures to include but not limited to tower and cabinets must maintain a setback of 50 feet from the jurisdictional wetland line;

Section 2. **Severability:** If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Effective Date. This Ordinance shall become effective as provided by law.
ENACTED this 11th day of February, 2016.
EFFECTIVE February 11, 2016.

BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA

Donald Schreiner, Chairman

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this February 11, 2016 by Donald Schreiner, who is personally known to me.

(SEAL)

Signature of Acknowledger

Exhibit A.

ROBERTSON'S SUB BEG AT NE COR OF LOT 7, RUN W 233FT, S 16DEG 22MIN W 145.3 FT TO HWY, THENCE SE'LY ALONG HWY TO SE COR OF LOT 7, N TO NE COR OF LOT 7 TO POB--LESS THAT PART LYING WITHIN THE FOLLOWING DESCRIPTION: FROM NW COR OF SEC RUN S 89-43-12 E ALONG N LINE OF SEC A DIST OF 1326.49 FT TO THE NW COR OF NE 1/4 OF NW 1/4, THENCE N 0-27-37 E 19.66 FT FOR POB, SAID PT BEING ON THE EXISTING N'LY R/W LINE OF SR 44, THENCE S 67-40-30 E ALONG SAID N'LY R/W LINE 715.17 FT TO A PT ON THE E LINE OF THE W 1/2 OF NE 1/4 OF NW 1/4, THENCE N 0-20-53 E ALONG SAID E LINE 33.65 FT, THENCE N 69-55-20 W 113.98 FT TO A PT OF INTERSECTION WITH A NON-TANGENT CURVE CONCAVE N'LY HAVING A RADIUS OF 11359.16 FT & A CENTRAL ANGLE OF 02-14-50, THENCE W'LY ALONG THE ARC OF SAID CURVE TO THE RIGHT 445.52 FT, SAID ARC SUBTENDED BY A CHORD WHICH BEARS N 68-47-55 W 445.49 FT TO THE CURVE'S END, THENCE N 67-40-30 W 150.51 FT TO A PT N 0-27-37 E OF POB, THENCE S 0-27-37 W 19.4 FT TO POB FOR RD R/W--PB 4 PG 63 ORB 1251 PG 2333



Exhibit B.

