

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on February 22, 2016, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Larry Blanks, Chairman
Bill Beckwith, Vice-Chairman
Marsha Hopkins
Tom Mahon
Tom Waller

STAFF PRESENT: Dennis Dutton, Zoning Administrator
Peter Frisina, Director Community Services
Chanelle Blaine, Planning and Zoning Coordinator
Patrick Stough, County Attorney

Welcome and Call to Order:

1. Consideration of the Minutes of the Meeting held on October 26, 2015.

Larry Blanks made a motion to approve the minutes. Tom Waller seconded the motion. The motion passed 5-0.

2. Election of the Chairman.

Bill Beckwith made a motion to nominate Larry Blanks as Chairman. Tom Mahon seconded the motion. The motion passed 4-0-1. Larry Blanks abstained from the vote.

3. Election of the Vice-Chairman.

Larry Blanks made a motion to nominate Bill Beckwith as Vice-Chairman. Tom Mahon seconded the motion. The motion passed 5-0.

4. Election of the Secretary.

Bill Beckwith made a motion to nominate Chanelle Blaine as ZBA Secretary. Larry Blanks seconded the motion. The motion passed 5-0.

PUBLIC HEARING

- 5. Consideration of Petition No. A-629-16, Allison Equities, Owners, request the following: Section 110-170. (k) Continuance of a legal nonconforming use. (4) The use is to be identical to the prior legal nonconforming use. The Subject Property is located in Land Lot 198 of the 5th District and fronts on Longview Road and S.R. 314.**

covenant in saying that it will never be used for something else other than an office. He said the property is an eye sore. He added that cars are parked out in front on the road and that you have to go around. He stated there are about 37 cars, busses, and limousines parked out there currently. He said that as far as he knows that's not legal with zoning, but no one has done anything about it. He stated that this has been going on for years now and that the cars don't move they just sit there for months and months. He added that the property is zoned residential and that County would be doing some good by removing the mess that's up there. He said that by removing the business it would make the road safer for the residents.

Herman Alvin Hope stated that he does a lot of driving up and down Longview. He said that the property has little concrete beside the driveway, and its parking area is mainly dirt and gravel. He added that cars leak oil, antifreeze, and transmission fluid and this fluid will go straight into the creeks/wells. He stated that this property has been a traffic hazard for three (3) or four (4) years. He added that accidents have almost occurred out there on plenty of occasions due to cars being parked in the streets and right-of-ways. He said that he has called the Sheriff's Department on the property a few times. He stated that there was a time when a person was living on the property day and night, because they were seen at the property at odd hours. He presented some pictures to the Zoning Board of Appeals.

Chairman Blanks asked if anyone else would like to speak in opposition. He asked the public to speak on things that are new and to not reiterate things that have already been said.

Steve Costello stated at one point in time there was a properly run garage there, but currently that is not the case. He said that business doesn't have room for parking and once vehicles are repaired they're raced down the street to see if they are running well. He added that the property is too small for the business they're trying to run out of it.

Howard Jones stated over the past five (5) years the building has become really junky and has become an eye sore. He told the ZBA his wife has to tell friends and family to come another way to their home so they don't have to come by the building. He said that it is dangerous because of the cars parked in the street and the wreckers delivering product all the time. He added that there are two (2) buses parked at the business that are running at night with their lights on. He said that during the day cars are coming in and out during the time school buses go up and down the street. He added that it is difficult for cars to come in and out of the neighborhood. He stated that he doesn't know how long the building has been up but it should have been taken down when the neighborhood was built.

building was not a residential structure and could not be sold or used as a residential building. She requested again that the building continue its legal nonconforming use. She added that it would be a hardship to the company for the building to go back to R-20 zoning because the building is not residential in nature. She said that she does believe prior to the road being widen that the property was a little larger than it is right now.

Chairman Blanks asked had she seen the photos that were presented by Herman Pope. He then asked Herman Pope if we could keep the pictures for our record.

Stephanie Wyatt said that pictures were similar to that of Google Maps.

Chairman Blanks asked Herman Pope when the pictures were taken.

Herman Pope replied that the pictures were taken in February 2013.

Chairman Blanks said that they had closed the meeting to the public and brought it back to the ZBA.

Tom Waller asked if a business license was issued at this time, and if so what is the business.

Stephanie Wyatt replied that she has no personal knowledge of whether or not there is a business license applied for. She stated that Allison Equities did not feel comfortable taking a business license out because they did not run a business out of there.

Tom Waller asked if there was a tenant in mind right now.

Stephanie Wyatt replied that it is her knowledge that Rodger Dawkins is currently renting the building and he is repairing cars to send them to auction. She added that he has been a longtime borrower of the mortgage company and has always paid on time.

Tom Waller asked if school children have to go around the back and side of this facility to get to school in the morning/afternoon. He asked if the area was safe.

Stephanie Wyatt said that she has no personal knowledge about the property. She stated that when she passed it this evening that she did not see a school.

Marsha Hopkins stated that she had the opportunity to drive by the business and was surprised at how many cars were tightly packed into the property. She asked about the drainage of fluids and what kinds of issues that can cause to the septic system. She also asked about the maximum amount of weight limit allotted to a lot.

Chairman Blanks said that there are County Ordinances that limit the amount of vehicles you could have on particular lot. He added that the Marshall's use to be very good at enforcing these ordinances. He asked Pete Frisina had the Marshalls been out to that property and are they having problems with whomever is leasing it.

Dennis Dutton said that in the past the Marshalls went out to this property constantly. He added that the Road Department, EPD, and the Sheriff's Department have been out there regarding leaking fluids. He said that they didn't get a good response from EPD regarding fluids. He stated that the County is down to only two (2) code enforcement officers to cover the entire County for the past three (3) years. He said this particular instance was brought to them by a complaint. He added that after the officers asked them to move the cars they then discovered that they did not have an occupational tax certificate.

Chairman Blanks asked had any citations ever been issued.

Dennis Dutton replied, yes.

Marsha Hopkins asked Judith Holt and the residents of the community if their property values are declining and, if so, do they think they are linked to the business on the corner.

A resident of the community responded that the property has declined by \$20,000.

Bill Beckwith asked staff what the ramifications were if they decided to deny the continuance.

Patrick Stough said if they deny it they will have to cease whatever it is there doing there that is based off of the previous years. He added they can appeal a decision from the ZBA to the Superior Court of Fayette County. He stated in determining whether or not to grant this continuance we will need to know what the prior use was and what the proposed use is going to be. He said otherwise it's very difficult to determine whether or not it meets that fourth criteria of being the same use.

Bill Beckwith asked who can provide that information. He said I assume Ms. Wyatt.

Tom Mahon made a motion to deny the continuance of a legal nonconforming use.

Tom Waller seconded the motion.

Tom Mahon stated that he has been in this County since 1977. He said that he has seen this property decline over the years. He added that he has several properties and has an obligation to make sure that his tenants are complying with the law and doing the things that they are supposed to be doing. He stated that he doesn't see any effort by the current owner from the lack of a business license and the pictures. He said the property doesn't look presentable because of the tight parking of the cars. He added that the ownership should take more responsibility of the property. He said if we approve it, it will be more of the same.

Tom Waller agreed with Tom Mahon's statement. He said he believes the Fire Marshall would see it as a fire hazard because of the number of cars tightly parked on the property.

The motion passed 5-0.

Pete Frisina asked if they wanted to give the business 30 days to come into compliance.

Tom Mahon asked how much time is given to a business to come into compliance.

Pete Frisina replied you can give up to 30 days.

Patrick Stough said the default is 10 days but you can give up to 30 days.

Tom Mahon made a motion that the petitioner come into compliance and the business cease operations within 30 days per the time allotted by the Fayette County Zoning Ordinance.

Larry Blanks seconded the motion.

Bill Beckwith asked what does coming into compliance mean.

Pete Frisina said that you have turned down this use, so this use must go away.

Bill Beckwith said so they will have 30 days to cease and desist.

Stephanie Wyatt (spoke on behalf of Allison Equities) requested the continuation of the legal nonconforming use on property located on 105 Longview Road. She stated that this property was foreclosed on by her client in 2014. She said prior to that the property operated as an auto/tire repair shop since 1975 approximately. She added her client made a loan on it in 2006. She stated that at the time the property was zoned CC-H Commercial. She added that a copy of the appraisal was submitted with the application. She said in 2007 her client financed the property. She added that in 2008 it was sold to another owner and when the loan went bad they had to foreclose on the property. She stated they took a writ of possession and took possession on April 19th, 2014. She said the property was empty from May to June, and during that time they made repairs and immediately put it up for sale. She added no one purchased the property so it was leased in June 2014 to an auto repair shop. She said that the lessee was unable to pay the lease and her client leased it again as an auto repair shop to Roger Dawkins for two (2) years. She said the structure on the property is a cement building and is not a residential structure. She stated to not continue the legal non-conforming use would be an undue hardship because the mortgage company purchased this property thinking it was commercially zoned. She added that the mortgage company is small and family owned with only 10 loans in its portfolio. She said that the mortgage company is currently upside down on the loan. She added that the property is valued at \$85,000 and we have owed an excess of \$180,000 on the property. She closed by saying that this would not be a detriment to the public good or the purpose or intent of the regulations. She added that the property for the past 40 years has been used as a commercial auto repair shop and would not be a detriment to the public by remaining.

Chairman Blanks asked Stephanie Wyatt what her relationship to the company was.

Stephanie Wyatt replied that she used to work for the company. She added that she and Ms. Tauber are related and that Ms. Tauber recently had a medical procedure done on last Thursday and is bedridden.

Chairman Blanks asked if anyone would like to speak in favor of the petition. Hearing none he asked if anyone would like to speak in opposition of the petition.

Dan Bailey said he came before the board many years ago to have his business rezoned and he was opposed. He added the reason why he was opposed was because someone tried to get another property rezoned above his office for a service station, oil change, etc. He said that because a lot of the owners have wells the board initially turned him down for possible pollution of the wells. He stated that someone from the board spoke up for him and said that they could zone it business only if they put a

Gerson Rivera stated that he has been in law enforcement for 30 years. He said that he has seen people at the repair shop between the hours of 2-4 in the morning. He added that in his professional opinion it's a chop shop. He stated that there have been instances when he has to slam on his breaks because someone was coming out of the driveway of the business at high speeds. He said that the community is beautiful and he will be retiring soon and will stay in Fayette County. He reiterated that the business is a chop shop and that it's an eye sore for the community.

Chairman Blanks said that the next person will be the last person to speak unless someone else had some pressing issue to state to the ZBA.

Judith Holt stated that she lived directly across the street from the building since 1967. She said that in 1975 there was not an automotive repair shop in that building, but a hydraulic shop where they repaired hydraulic lifts. She added that at one time there was a 12 foot buffer and some trees separating the building and Longview Road. She stated that when S.R. 314 was widened they removed two (2) lots and they only allowed them to stay because they had a billboard on the property that had been there since 1987. She said that when the State came in to widen the road they took the land shaped as a triangle leaving the building exposed. She added that for two (2) or three (3) years the building was vacant. She stated that the State took the building over for a few years as a storage facility. She said that the State left and the building remained vacant again for a few years until the first automotive repair came in. She added that every automotive repair shop that has been there has been a problem.

Chairman Blanks stated the write up said Carlton Holt, Sr. operated his business from this property.

Judith Holt said that he operated his business in the back of his home. She stated you could not see his business from the road. She added that his remained in the back of his home until he died in 1987. She said that they inherited the business from her father-in-law in 1987 and removed it from the back of the home. She closed by saying that there is not an automotive shop up there at all.

Chairman Blanks closed the meeting for public comments.

Chairman Blanks gave Stephanie Wyatt time for rebuttal.

Stephanie Wyatt apologized for misleading the public and the ZBA about there being an auto repair shop business there since 1975. She stated that was not her intentions but that there was a business there since 1975. She added that her statement previously about no one living in the structure was only meant to convey that the

Tom Waller stated that someone in the audience wanted to answer the question about whether or not the property was safe for school children.

Sandra Kidd stated that there is a small Christian school located near the church. She said that she couldn't tell you the enrollment number there. She added that her kids attended their preschool years ago and that the traffic wasn't an issue with that school. She stated her concern was with the public school busses letting kids out in front of the subdivision where all of this is taking place. She added that she is concerned for the children and the bus.

Bill Beckwith asked Pete Frisina what the property was zoned.

Pete Frisina replied that the property is zoned R-20.

Bill Beckwith asked the purpose of variance is because it's a nonconforming use in a residential area.

Pete Frisina said that for many years there has been confusion about what this property is zoned. He stated that the County did not realize it until they had aerials and a GIS system. He added that for many years it was believed to have been zoned C-H. He said that the only C-H property is the triangle piece to the south of it.

Bill Beckwith said that was when Longview was rerouted to widen for S.R. 314 the triangular piece of property was purchased by the State.

Marsha Hopkins asked why the ZBA was just now hearing about this. She said the building set idle for a year (June 2013-June 2014). She stated that the issue should have come in when the building was leased out in 2014.

Pete Frisina replied that it would have come to the ZBA if the lessee would have come in for an occupational tax certificate. He added that Code Enforcement went out to the property asking the owner of the business for an occupational tax certificate and none was produced, and that is how this process started. He stated that he doesn't have any zoning records on the building. He added that all he knows is that the property was built in the middle 1970's as a non-residential building. He stated that the County was rezoned in its entirety on November 13, 1980, and anything prior to that date we don't have records on it. He said that we did not believe it was a residential structure because it did not look like a house. He added that it has always had some type of business in it. He said for the longest time it was assumed that the building was zoned commercial because of the paper maps used at that time.

Tom Waller asked would she have to provide that information on appeal.

Patrick Stough said no, he believed the ZBA needs that information today.

Tom Waller said but we don't have it.

Chairman Blanks asked when the last time a business license issued.

Bill Beckwith stated that we cannot require a business to condition its use. He asked Ms. Wyatt if the company would be willing to talk to the neighbors about screening or making the property visually appealing.

Stephanie Wyatt said that company's intention is to sell the property and they will do whatever is best to sell it. She added that she knows an eye sore will not sell. She also said because the building is concrete and abuts a major highway they know the property will not sell as a residential property. She stated that the mortgage company wants to be good neighbor. She added that this is a small mortgage company owned by a couple in their late 70's and early 80's are who are winding down and would ultimately want to sell the property.

Bill Beckwith stated that financial situations are not something that the ZBA considers when making their decisions.

Bill Beckwith asked what would be their proposal in continuing that property.

Stephanie Wyatt said they would like to continue the business if given the ability to do so. She stated that the mortgage company owners did not know the current situation of the property. She said that the ultimate goal would be to sell the property as a commercial use.

Chairman Blanks said the last time a business license was issued was December 31, 2006. He stated that the business has not had a valid business license since 2007. He added that the business has long expired its conditional use limitations.

Bill Beckwith asked staff if the continuance was denied what would happen to that business.

Patrick Stough said the business would have to discontinue the use and if they continue they will be cited. He added that as far as what they do with the property he could not answer that. He said they couldn't use it for anything other than an R-20 use.

Larry Blanks asked if it was in their purview to demand that the cars be move.

Pete Frisina said that the intent is for the cars to be removed in 30 days and for the business to be gone.

Chairman Blanks asked if they could specify that in the conditions.

Pete Frisina said no.

Tom Mahon said that it is assumed.

Chairman Blanks said we just hope that they will comply.

Patrick Stough said that if the cars are violating any ordinances they could be potentially cited.

The motion passed 5-0.

There being no further business, Tom Mahon made the motion to adjourn the meeting and the meeting adjourned at 7:58 pm.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY


LARRY BLANKS, CHAIRMAN


CHANELLE BLAINE, ZBA SECRETARY