

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on December 19, 2016, at 7:37 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

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

STAFF PRESENT: Pete Frisina, Director of Community Services
Chanelle Blaine, Planning and Zoning Coordinator

Welcome and Call to Order:

1. Consideration of the Minutes of the Meeting held on November 28, 2016.

Bill Beckwith made a motion to approve the minutes. Marsha Hopkins seconded the motion. The motion passed 5-0.

PUBLIC HEARING

2. Consideration of Petition No. A-642-16, Isaias Sandoval, Owner, and Tracy Trite Waldrop, Agent requests the following: Variance to Sec. 110-125. A-R, Agricultural-Residential District, (d) Dimensional requirements, (6) Side yard setback: reduce side yard setback from 50 to 6 feet to allow an existing well house to remain, to reduce the side yard setback from 50 feet to 31 feet for an existing shed to remain and to reduce the side yard setback from 50 feet to 27 feet for an existing shed to remain. The subject property is located in Land Lot 182 of the 4th District and fronts on Mud Bridge Road.

Tracy Waldrop agent for Mr. Sandoval stated that they purchased the property several years back. She said that they created some structures on the property and one (1) is not an issue the other one (1) is an issue and that is the one (1) we are requesting a 27 foot variance. She added that the other two (2) were there prior to purchasing the property. She stated that they did not realize they needed a variance until they applied for their current permit to renovate their home. She said the garage that is labeled as "B" on the survey and the well house were both built before Mr. Sandoval purchased the home. She added that he wasn't aware during the time he purchased the home and if he did he would have contracted to have those permits applied for and had those approve. She stated that after some research was done they found out that a permit was applied for the garage, but was never closed out and never received the Certificate of Occupancy. She said that they believe the well house was built at the same time and was not part of the permit process. She added that the well house does house a well and that is why they are asking for a variance for it. She stated that it is over the requirements and was hoping that it was small enough that it wouldn't require a permit but it is larger. She said

the good news is that the property line adjacent to it there is two (2) lots that are an issue that have a little bit of a clearing and then some trees before you get to the other side of those trees over to the west and there are houses there. She added that it is not an eye sore and no one (1) has complained up to this point. She stated that further back there are some sheds back there and the one (1) that inside is okay but the one (1) that is over the building setback line labeled "C" that is the one (1) they are requesting the 27 foot variance for. She said that it is to house an RV and has a concrete foundation and was put up by Mr. Sandoval. She added that he was not aware that he needed a permit for something like that; which he considered a shed. She stated that he is very aware that he needs that and is asking for a variance. She said that he is willing to purchase a permit for that if he needs to if it will help in the approval process at all. She added that he is also willing to renew the permit for the garage that expired so that can be given a variance and they can close out with it and get a CO. She stated that if the Zoning Board of Appeals voted to deny them tonight that they provide a suggestion and/or allow them to go to their neighbors to buy some of their land to make it in some kind of variance that they would approve or compliant to the zoning ordinance. She said another reason on why this was cause was because of the prior owners had the lot as a flag shape. She added that lenders normally are happy with two (2) acres and nothing more. She stated that some of the permitting could have gotten messed up from the lot being in the flag shape; she added that the lot is now together and is one (1). She added that there might be a language barrier as well with the Sandoval's.

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. Hearing none he brought it back to the Zoning Board of Appeals.

Chairman Blanks asked what year the other buildings were built. He clarified and said buildings A and B.

Tracy Waldrop replied she believes it was when the house was built or 2010.

Mr. Waller stated that "A" was the well house.

Chairman Blanks said "B" was the garage.

Pete Frisina stated what we can tell from the aerials it appears that there was some resemblance of a building where A is in 1987. He said that the house was built in 1983 and the aerials from 1987 show a building but he can't tell if it's the same size or not. He said the garage was permitted in 2000. He added that the building C does not show up in the 1995 aerials. He said that B shows up in the present day aerials and that a permit was pulled for it.

Chairman Blanks asked when they bought the house nothing came up on the open permit.

Pete Frisina replied that we don't review sales. He stated that the issue came about was the property had a flag lot cut out and we see this a lot when a person pulls a loan on a home and the bank doesn't want to tie that loan to the full 10 acres so they asked them to cut out a smaller piece of property. He said that this doesn't go through a subdivision process, but what happens is, that lot is not legal. He added when they came into the office for a renovation permit Dennis told them they had to put it back together, and they put it back together; but that's when the other buildings were discovered. He stated that this has all transpired in the last year or so, the renovation was done.

Bill Beckwith stated that Ms. Waldrop said that Mr. Sandoval may be interested in contacted his neighbors the Schell's or the Baird's.

Tracy Waldrop replied no not at this time. She stated that they weren't sure on how much they would need and they didn't want to open up that door until they knew approximately how far they would have to go into their property. She said that sometimes asking for someone's land and even if it is for money to purchase can sometimes send them into a tizzy.

Bill Beckwith asked if they had approach them.

Tracy Waldrop replied no they have not.

Chairman Blanks stated that the amount that you will need is the amount of the variance you are asking for.

Tracy Waldrop agreed and said if they did not approve their appeal.

Tom Waller stated that he had trouble with the submission in that your building sizes don't correspond with the size. He said that building A you present as a well house of 270 square feet if you use the numbers that you provide on your diagram you come up with a building of 419 square feet; building B you present as 696 square feet and if you use the dimensions you present you come up with a building of 796 square feet; building "C" RV/shed your application says that this is 696 square feet but using your figures it comes up to a 955 square feet. He added that he had difficulty locating the septic tank. He stated that your septic tank location was cited as north of the front door. He said that most of Fayette County is north of the front door of this house. He added that he found these omissions and error quite troubling. He asked if Ms. Waldrop had any comment.

Tracy Waldrop replied that they had a deadline to meet with the dimensions. She said that the surveyor did get back with them and gave them the actual dimensions. She added that may be the difference in that.

Tom Waller stated that she should have used the word approximately in their submission. He said that these weren't even approximate, but out of the ball park.

Bill Beckwith and Tom Waller discuss how he determined the square footage of the buildings.

Tom Waller stated that there was a horse barn cited as part of the reason why a couple of these buildings are where they are, but your submission did not include a previous location for the horse barn. He asked where the horse barn was and how big it was.

Tracy Waldrop replied that the horse barn was there and it was inside the building setback line. She stated that it is not an issue and they are not requesting a variance for it. She said that the horse barn is right next to building C.

Tom Waller stated that is the one (1) you stated as 696 square feet. He said that he had no comment on that shed. He asked if it was a horse barn.

Tracy Waldrop replied no, the horse barn was next to it.

Bill Beckwith clarified saying next to C.

Tracy Waldrop replied yes. She said she had gotten them confused as to which one (1) was the horse barn and what the other one (1) was. She added that she was unable to clarify that until after we submitted that and gotten the dimensions.

Tom Waller asked if she knew why the well was in that particular location, or that was where it was when they bought it.

Tracy Waldrop replied that was where it was when the Sandoval's purchased it.

Tom Waller asked if there was any topo requirement or anything else that required it to be in that particular place.

Tracy Waldrop replied that she is not sure and that she hasn't researched further back than this parcel here of what use to be on there before. She said that they like for the well houses to be in close proximity to the house and the house has been there for many years and we assumed that it was convenient for them at that time.

Tom Waller stated that he notice they did not show the line of Leyland Cypress Trees that is also there in the vicinity of that well. He asked if there was any reason on why he was not showing those.

Tracy Waldrop replied that she didn't think that it would be an issue with this. She stated that this is what they were given by the surveyor. She added this is what her client brought her. She stated that they asked for the dimensions in addition to that but they did not have them on there.

Pete Frisina stated that he provided an aerial photograph. He asked if it was helpful.

Tracy Waldrop stated that on the right side of the house if you are looking at it straight on there are trees to the east of the house as well. She said that may have caused the horse barn to be built toward the left because it was cut out in such a narrow piece of property.

Bill Beckwith asked if that unidentified building used as a horse barn.

Tracy Waldrop replied yes.

Bill Beckwith asked if there were horses in there.

Tracy Waldrop replied that there are no horses in the building.

Bill Beckwith stated that the unidentified horse barn looks large enough to house an RV.

Tracy Waldrop asked the Sandoval's if it was possible for them to get the RV into the horse barn.

Sandoval's said they intend to own a horse barn again someday.

Tom Mahon asked how this came to us in the first place.

Chairman Blanks stated that they remodeled the house and the inspectors noticed it while doing an inspection.

Tracy Waldrop interjected that it was a flag piece and combined it back into the whole 10 acres and that's when they saw the other buildings.

Tom Mahon asked if they knew about the building permit process.

Tracy Waldrop replied he did when he hired a contractor.

Pete Frisina stated that the Zoning Administrator discovered this going through the permitting process.

Tom Mahon asked if building C was built by the current owner.

Tracy Waldrop replied yes.

Tom Mahon asked who built the horse barn and when.

Tracy Waldrop replied the previous owner. She stated that it was there when they purchased the property.

Chairman Blanks stated that one (1) is not in question.

Tom Mahon stated that he just wanted to know how it all fits in. He agreed with Tom Waller that the 1400 square foot building was large. He asked if building C was 953 square feet.

Tom Waller replied that he figured it was 955 square feet based upon the dimensions cited 34.4 by 27.7.

Chairman Blanks stated that it was still in the County limits.

Tom Waller stated that he wasn't arguing but just presenting.

Chairman Blanks said he doesn't think it's an issue.

Tom Waller stated that what was presented was a square footage of 696 and in reality the building is 955.

Chairman Blanks replied that she has explained that it was a rush to get the package in.

Tom Waller stated that he understood the explanation.

Chairman Blanks stated that the way he looks at this is there are three (3) issues building A & B which they inherited when they bought the property, so that was at no fault to them and C was something they caused to be. He said that building C was built illegally.

Bill Beckwith stated that he thinks he knows where he is going because he has the same thoughts.

Tom Mahon stated that he too was on the same wavelength.

Chairman Blanks stated that he is of the opinion that building A and B are easily to justify but there is no way I see to justify building C.

Tom Mahon asked to make a motion.

Chairman Blanks asked for Tom Mahon to hold on and wait if he doesn't mind. He stated that he was looking at the overview photo and to acquire property for building C he will need to ask both of his neighbors. He said that they may just need property from the rear neighbor.

Tom Mahon made a motion to approve the setback variance for building A and B because it was prior to the current owner purchasing the property. He asked if the wording was properly.

Pete Frisina stated that you will approve the variance as they are presented building A would reduce the setback from 50 feet to 6 feet and building B would reduce it from 50 feet to 31 feet.

Tom Mahon reiterated that it was based on the fact that it was there prior to the current owner purchasing the property. He said that we can see that this was back there since 1987 or 2010.

Chairman Blanks stated that it was 2010.

Chairman Blanks stated that the motion would be for buildings A and B; A being the well house to reduce from 50 feet to 6 feet and B would be the garage to reduce it from 50 to 31 feet.

Bill Beckwith seconded the motion.

Tom Waller asked for discussion.

Chairman Blanks stated that discussion was open.

Tom Waller asked if the County's setback regulations were established in 1980.

Pete Frisina replied yes.

Tom Waller stated that when buildings A and B were built they were in violations of the County's setback. He asked if that was correct.

Pete Frisina replied yes they are both in the 50 foot setback.

Tom Waller stated that we are saying hey we didn't catch it and so it got by.

Bill Beckwith stated that we don't know if it was legal to be in the setback or not. He said that we don't know that because we don't have the information. He added that it was added on to, but it may have been a legal well house when it was established.

Tom Waller stated that a legal well house is 80 square feet and this building is almost four (4) times that size.

Bill Beckwith stated yes right now but if you look at the photograph it was a lot smaller when it was built. He said it was added on to at some other point.

Tom Waller asked if we should accept the enlargement.

Bill Beckwith said it wasn't the Sandoval's fought that it was enlarged.

Tom Mahon asked Tracy Waldrop to ask the Sandoval's if they enlarged that building; and did they make any alterations to that building from the time they purchased it.

Tom Waller clarified and said to the well house.

Tracy Waldrop replied that they just added walls to where there was a roof at already.

Bill Beckwith asked if it was to cover or enclose the well.

Tracy Waldrop replied yes and he just added walls to cover up the ceiling. She said from the road it looked like a close structure but it was open in the back and Mr. Sandoval closed in the back.

Tom Waller asked if the foundation was enlarged with more concrete.

Tracy Waldrop replied no. She said that Mr. Sandoval said that he did not expand the foundation with any concrete when he added the back walls.

Chairman Blanks stated that the shed was already there and he added three (3) walls on the back side.

Tracy Waldrop asked Mr. Sandoval if it was just on the front side. She stated that he just added on to what was there and it was only two (2) walls.

Tom Mahon asked if he improved an illegal building.

Tracy Waldrop replied yes without expanding it.

Bill Beckwith stated that he didn't enlarge a building but protected the well. He said that he didn't enlarge but made the walls meet the shed roof.

Chairman Blanks asked if there were any comments.

Marsha Hopkins stated that she can agree with the thinking that Building A and B were there. She said that Pete Frisina said we don't get into the conditions of sale but I can't help but think it would have showed up during the title search or a survey of the property at the time of purchase.

Tracy Waldrop stated that she could help with that because she has been a closing attorney for 18 ½ years. She said that they do not search these kinds of things. She added that she has searched for permits on a couple of times for a closing and it was always for a loophole to get someone out of a contract. She stated that it is not something that the agents go and do nor is it regular business practices within the industry. She said that it is going above and beyond of checking things out and it is not a part of the title process whatsoever. She added that the title examiners will go to the court house but basically that is it. She stated that everything they are searching for is there. She said the deeds, the judgement docket to make sure the sellers don't have any judgements against them that sort of thing. She added that you would have had to have some sort of a law suit or lien stemming from the non-permit process for them to really know about it.

Chairman Blanks stated that he was curious why the County doesn't follow up on a building permit. He said that if building B was started it is obvious that they went out and did some inspections. He added that the permit was never closed and the County never followed up. He stated that the previous owner never followed up and it just died for a lack of a second.

Pete Frisina stated during that period in time a lot of the permits were paper files. He said that they were right and it does happen.

Tom Waller asked how many permits are in that limbo now.

Pete Frisina asked does that make any difference for this position.

Tom Waller replied no.

Pete Frisina stated that he couldn't tell you off of the top of his head because a lot of the files we had were paper files and are in a warehouse. He added that there was no way to keep track of them electronically back then.

Chairman Blanks stated that he fully supports Mr. Mahon's motion to approve A and B. He said if there is not any more question we will call the question.

Tom Mahon made a motion to approve the setback variance for structures A (50 feet to 6 feet) and B (50 feet to 31 feet). Bill Beckwith seconded the motion. The motion passed 4-1. Tom Waller voted against the motion.

Chairman Blanks stated on building C would it be within our purview to table this to the next meeting to give the owner's time to see if they can get additional property. He asked if they got the additional property from the other property owners since the building was built without a permit is it salvageable.

Pete Frisina replied that he had no idea.

Tom Mahon asked if the building inspectors had to go out.

Pete Frisina stated yeah if there has never been a permit no one has inspected it to his knowledge.

Chairman Blanks asked what if they go through the trouble of getting the additional property so that it is within the variance; and the inspectors or building permit people say that we can't issue a permit on an already existing building because we didn't see it in the process of being built.

Pete Frisina stated that he couldn't say and would have to have someone look at it. He said that he was looking at the two (2) properties next door and one (1) property is 5.4 acres and the other is 5.9 acres. He added that we don't have a lot of room to play with.

Chairman Blanks stated that we are just looking at a 30 foot square.

Tom Mahon stated that if you look at the property owned by the Baird property is the one that is most impacted.

Pete Frisina replied yes.

Tom Mahon asked if they would need to get any property from the Schell family as well because of the distance.

Pete Frisina replied that you will possibly have to take from both.

Tom Waller asked if the adjacent properties are five (5) acre minimums.

Pete Frisina replied yes.

Tom Waller asked if the property was reduced below five (5) acres there couldn't be a house there.

Pete Frisina replied yes, you can't make those lots there nonconforming by reducing them to less than five (5) acres.

Chairman Blanks stated that Pete said the properties were 5.4 on one (1) and 5.9 on the other.

Pete Frisina replied yes, but they have to be willing to sell to.

Bill Beckwith asked if all of this doesn't come to fruition; either they can't get the property or the permit what happens next.

Pete Frisina replied they would have 30 days to remove it or 30 days to appeal your decision.

Tom Mahon asked can we extend it with the holidays coming up.

Pete Frisina replied no.

Tom Mahon stated that what we traditionally do on this board is look for other options because we don't like to set precedents.

Pete Frisina stated that by tabling it you give them to the next meeting without making a decision.

Tom Mahon made a motion to table the setback variance for structures C (50 feet to 27 feet) to January 23, 2017. Bill Beckwith seconded the motion. The motion passed 5-0.

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There being no further business, Tom Mahon made the motion to adjourn the meeting and the meeting adjourned at 8:22 pm.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY


LARRY BLANKS, CHAIRMAN


CHANELLE BLAINE, ZBA SECRETARY