

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on August 26, 2002 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Bill Beckwith, Chairman
David Bartosh, Vice-Chairman
Larry Blanks
Ron Mabra

MEMBERS ABSENT: Tom Mahon

STAFF PRESENT: Kathy Zeitler, Director of Zoning/Zoning Administrator
Bill McNally, County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

Welcome and Call to Order:

Chairman Beckwith called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present.

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Larry Blanks made a motion to hold an Executive Session to discuss a legal matter. Ron Mabra seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent.

At 7:05 P.M. the Z.B.A., Kathy Zeitler, and Attorney Bill McNally went into Executive Session. Attorney McNally advised the Z.B.A. on a legal issue. No action was taken. The public hearing reconvened at 7:30 P.M.

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1. Consideration of the Minutes of the meeting held on June 24, 2002.

David Bartosh made the motion to approve the Minutes as circulated. Larry Blanks seconded the motion. The motion passed 3-0-1 with Ron Mabra abstaining due to being absent at the June 24th public hearing. Tom Mahon was absent.

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Kathy Zeitler read the procedures that would be followed for presentation and opposition for petitions.

2. Consideration of Petition No. A-525-02, Dan Stinchcomb, Owner/Agent, request a 13 foot Variance to reduce the front yard setback from a minimum of 55 feet to a minimum of 42 feet to allow the existing encroachment of the single-family dwelling to remain. This property is located in Land Lot 86 of the 5th District, fronts on Shoreline Drive, and is zoned R-20.

Chairman Beckwith reminded the applicant that only four (4) members were present.

Randy Boyd, agent for Dan Stinchcomb, advised that Mr. Stinchcomb built the house located on Lot 22 of Shoreline Trace, Phase I, 240 Shoreline Drive. He noted that a building permit was issued in January, 1998 and the Certificate of Occupancy was issued in January, 1999. He confirmed that a 12.6 foot encroachment on the northwest corner of the house was discovered when a survey was prepared for the real estate closing, and the Certificate of Occupancy was then pulled by the Building Department. He remarked that a variance application was heard by the Z.B.A. on March 22, 1999 but was denied. He commented that Mr. Stinchcomb did nothing about the encroachment for a couple of years due to his health problems. He stated that in March, 2002, Mr. Stinchcomb had a

revised final plat prepared showing the reduction of the setback from 55 feet to 40 feet for the property owners to sign, however he only got thirteen (13) property owners' signatures so this option failed.

Mr. Boyd confirmed that Shoreline Trace, Phase I was recorded November 19, 1996 but in January, 1998 the B.C.C. reduced the front building line for the R-20 zoning district from 55 feet to 40 feet. He pointed out that if the house was constructed under the current guidelines that it would be in compliance. He said that he had visited the site and the lot drops abruptly, about 30 feet, from the road and also contains a creek in the middle of the lot with pines and oaks on the front and side. He added that there is a ten (10) foot retaining wall at the rear of the property. He went on to say that a mistake was made then, but now builders are having a survey prepared at the time the house is first staked on a lot.

Mr. Boyd confirmed that the house has been vacant for approximately 3.5 years. He remarked that Mr. Stinchcomb is basically out of the building business and hasn't built a house in 2.5 years due to a blockage in his brain and coming close to death twice. He added that the yards are deteriorating and someone has been dumping trimmings on the lot. He respectfully requested approval of the petition.

Chairman Beckwith asked if there was anyone to speak in favor of the petition.

Donald Sims of 130 Baywatch Circle stated he was the unofficial coordinator for the neighborhood during its establishment of a homeowners association. He said that he was involved in trying to secure signatures for the revised final plat but the problem was catching people at home. He remarked that he had talked to the residents and if they were at home they were willing to sign readily. He added that one (1) homeowner had a crack in his driveway and refused to sign the revised final plat. He stated that the subject site is an eyesore and the majority of the property owners want the house sold so the property will be maintained. He went on to say that property owners had volunteered to cut the grass to keep the lot from looking so bad. He remarked that the longer the property remained vacant that it deteriorated and decreased property values of others. He said that you could not tell that the house encroached on the setback. He thanked the Z.B.A.

Chairman Beckwith asked if there was anyone to speak in opposition of the petition.

Mike Chancey of 250 Shoreline Drive noted that only 13 homeowners out of 34 homeowners signed the revised final plat. He confirmed that he did not sign the revised final plat. He pointed out that his lot, which is adjacent to the subject property and follows the same topography, complied with the code. He added that the subject house was existing when he purchased his house in November, 1999. He remarked that there is currently a "For Sale" sign on the subject lot. He said he has never dumped any lawn trimmings on the subject property and does not know of anyone who has. He addressed criteria #1. and commented that the lot did drop off but his lot follows the same topography. He confirmed that there is not a creek on the lot but only a natural drainage area. He went on to say that the side yard setback appeared close to his lot and that if a fence was to be erected that he would be unable to open his car door. He requested the Z.B.A. to uphold the setback as required when the house was constructed.

Eric Manning of 280 Shoreline Drive stated that one (1) of the criteria listed in granting a variance was that it could not be for the owners convenience. He said that the builder was aware of the requirements when the house was constructed. He remarked that a mistake was made but a variance should not be given to someone with his lack of care or concern for the subject property. He commented that the property owners appreciated Mr. Sim's efforts however, it had been volunteers in the neighborhood to maintain the lot since Mr. Stinchcomb has made no effort to upkeep the lawn or house. He added that if the house was to sell that Mr. Stinchcomb would not honor any commitments made to the home owners. He reported that Mr. Stinchcomb has refused to speak to him for the past three (3) years in attempting to get simple matters resolved at his residence which Mr. Stinchcomb agreed to in his signed allegation. He confirmed that he refused to sign the revised final plat.

In rebuttal, Mr. Boyd apologized for calling the drainage ditch a creek since he did not walk the entire property but observed the change in the topography. He confirmed that the side yard setback in question was 24'3" from Lot 21 but is only required to meet a 10 foot setback. He said he was not suggesting that the homeowners in the subdivision had dumped the trimmings but someone had. He reconfirmed that nobody was aware of the mistake until after the Certificate of Occupancy was issued and a closing survey was prepared. He remarked that with the human element involved that mistakes were going to be made. He added that this can be avoided by preparing a survey when the house is staked and also with the footings. He requested that the variance be approved since the property has been vacant for the past 3.5 years.

At this time, Chairman Beckwith closed the floor from public comments.

David Bartosh made a motion to deny the petition for discussion purposes. Larry Blanks seconded the motion.

Mr. Bartosh expressed concern about the conflicting reports as to why the house was located incorrectly. He read the following justification indicated on the application. "The house constructed on this lot, due to abrupt topography change, was placed so as to be the most aesthetically pleasing as one would travel west along Shoreline Drive. Unfortunately, in so doing, the house encroaches the front building line." He said he had conflicting reasons in everything he read on the application.

Mr. Blanks recalled that when this petition was heard three (3) years ago that there was an alternative which was to revise the final plat, and that option still existed. He said that it is not the Z.B.A. issue if property owners are holding off from signing the revised final plat, but an issue between the home owners and the builder. He added that he was not in favor of granting the variance.

Mr. Bartosh commented that no action was taken for several years, more effort should be taken to catch the homeowners at home, and if a majority want the subject property sold then they would sign the revised final plat. He stated he appreciated a greater effort being made in staking houses on property because if the builder is doing his job properly then these type petitions would not be before the Z.B.A. He concluded that the earlier decision should stand.

Ron Mabra remarked that if this house was constructed under the current guidelines that it would be legal. He read criteria #2. for granting a variance. "The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship." He said he thought that it was a particular hardship since it had been there for 3.5 years and is an eyesore. He remarked that he was thinking about the appearance for the benefit of the community.

Chairman Beckwith advised that three (3) years ago the petition was denied because there was another alternative. He explained that by granting a variance the Z.B.A. was allowing someone to break the ordinance, the laws of Fayette County. He said that there were at least two (2) people present tonight who refused to sign the revised final plat, so it is a moot point as to whether he got 32 signatures or not. He pointed out that Mr. Stinchcomb had made the effort to do what the Z.B.A. had requested. He advised that the ordinance was amended from 55 feet to 40 feet which makes a difference, but development must comply with the approved recorded final plat, which required a front yard setback of 55 feet. He commented that a mistake had been made but he could not tell by looking at the property. He pointed out that a Certificate of Occupancy was issued and if the final survey had not been prepared this application would not have been heard tonight. He added that the variance was very unusual and that granting the variance was the right thing to do.

Mr. Blanks stated that the Z.B.A. did not give any direction to the builder at the previous public hearing.

Hearing no further comments, Chairman Beckwith called for the vote. The vote was 2-2 with Chairman Beckwith and Ron Mabra voting in opposition of the denial. Tom Mahon was absent.

Chairman Beckwith made a motion to approve the petition. Ron Mabra seconded the motion.

Chairman Beckwith urged the Z.B.A. to consider the situation and try to do the right thing.

Mr. Bartosh replied that the Z.B.A. is doing the right thing because the precedent has been set and the Z.B.A. has made some hard and difficult decisions, not with pleasure. He added that some think it is easier to ask forgiveness than permission.

Mr. Blanks reiterated that there is still an alternative between the homeowners and the builder.

Mr. Mabra stated that he did not feel that the Z.B.A. is setting a precedent since the requirements were changed. He said that Mr. Stinchcomb had attempted to get the plat changed legally with the required signatures. He added that there were certain regulations and particular regulations involved.

Chairman Beckwith concurred.

At this time, Chairman Beckwith called for the vote. The vote was 2-2 with David Bartosh and Larry Blanks voting in opposition of the approval. Tom Mahon was absent. The motion for approval failed due to the lack of three (3) affirmative votes, therefore the petition was denied.

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3. **Consideration of Petition No. A-526-02, Dr. Edwin M. Richardson and C. Bradford Marsh, Owners, and David Yeager, Mallett & Associates, Inc., Agent, request Variances for the following: (1) To delete the requirement that impervious surfaces be located a distance of 10 feet from the side property line in the S.R. 54 West Overlay, (2) To relocate the 10 foot landscape strip required along the side property line, and (3) To allow off-site parking, and (4) To allow Phase II site access to be solely from the required inter-parcel access from Phase I lot, instead of from S.R. 54 West (Ebenezer Road is an Arterial but is not adjacent to Phase II lot. The subject properties are located in Land Lots 58 and 59 of the 7th District, front on S.R. 54 West and Ebenezer Road, and are zoned O-I Conditional.**

Dr. Ed Richardson stated that he owned the dental office at the corner of Ebenezer Road and S.R. 54 West. He remarked that in 1996 he purchased three (3) lots affected by the realignment of Ebenezer Road. He said that approximately six (6) months after the construction of his dental office the adjacent parcel came available. He reported that his family owned the corner lot and that he and Brad Marsh owned the adjacent 2.00 acre lot. He confirmed that the 2.00 acre lot is heavily wooded and contains beautiful oak trees. He presented pictures of the existing dental office and also the architect's rendering of the proposed structure. He noted that he had an additional survey prepared to locate some of the existing trees which he felt should be saved. He said that six (6) trees were identified within the 50 foot building setback plus a 40"+ oak tree. He remarked that the driveway and parking would be constructed around these trees, but as a result this created diminished parking. He stated his plans were to relocate the parking into the old abandoned road bed of Ebenezer Road. He also presented a picture of the old abandoned road bed. He explained that the reason for the variances were to provide parking on the property line between the two (2) adjacent lots of which he owns 100% of one (1) lot and 50% of the adjacent lot. He confirmed that the lots could not be combined due to them being two (2) separate financial investments, but for practical purposes they are both part of his financial future. He reported that he had no problem relocating the parking and granting a legal easement which would save several large specimen trees and also make excellent use of the old abandoned road bed. He closed by saying he would be glad to answer any questions.

Chairman Beckwith asked if there was anyone to speak in favor of the petition.

Brad Marsh stated he owns the adjacent lot jointly with Dr. Richardson. He concurred that he would be willing to grant any legal easements necessary to allow the infringement upon Dr. Richardson's property which covers three (3) of the four (4) variance requests. He added that the fourth variance dealt with no access to S.R. 54 West but instead route the traffic onto Ebenezer Road.

Chairman Beckwith asked if there was anyone to speak in opposition of the petition.

Claire Rogers of 332 Fayette Villa Court stated that Fayette Villa Estates was directly across S.R. 54 West from Ebenezer Road. She remarked that the existing dental office was a quality building. She commented that property owners along S.R. 54 West were looking very closely at development within the overlay zone because everything is for sale in the corridor. She said she could not see a hardship since the property was wide open with no physical restraints. She added that she did not understand why the lots could not be combined under a financial agreement. She asked the Z.B.A. to consider the S.R. 54 West overlay requirements.

In rebuttal, Dr. Richardson advised that the reason for routing traffic onto Ebenezer Road is because the intersection of Ebenezer Road and S.R. 54 West is planned for signalization in the future by the D.O.T. which is why Ebenezer Road was realigned. He added that this should be safer. He stated that the property could be developed without the variances but every tree will have to be removed. He said he was attempting to find a solution to save the large trees and comply with the overlay zone requirements.

Chairman Beckwith asked Kathy Zeitler the requirements of the Tree Ordinance regarding specimen trees.

Mrs. Zeitler replied that the Engineering Department had reviewed the site plan and commented that there are specimen trees on the property, but even staying as far away from the trees as possible, due to their very large critical root zones they may not survive under the proposed site plan. She added that another second building was proposed on the Phase II lot which would also further impact the specimen trees, so they can't all be saved.

Dr. Richardson stated that Mrs. Zeitler did not answer the question.

Mrs. Zeitler advised that the Tree Ordinance is administered by the Engineering Department and not the Zoning Department.

At this time, Chairman Beckwith closed the floor from public comments.

Larry Blanks asked if all four (4) variances were dependent on each other.

Dr. Richardson replied that the access to S.R. 54 West is a stand alone variance and the others are dependent on each other.

David Bartosh commented that there are other options available without setting a precedent which will impact the entire corridor. He said that the parties have mutual interest and should be able to combine the two (2) properties with a partnership and an alternative in the financial structuring. He stated that any development would impact the trees negatively and new trees can be planted. He remarked that the ordinance should not be butchered for a convenience.

Mr. Blanks expressed concern that if one of the property owners decides to sell one of the lots then there is a new owner which owns one lot which is dependent on the adjacent lot. He agreed that there are alternatives which would be less impacting on the corridor that can be provided through legal agreements to combine the properties while handling the financial situation.

Ron Mabra concurred and agreed that there are other alternatives which would not require granting of these variances.

Chairman Beckwith stated that the dental office is an attractive building and future development would probably be the same, however there seemed to be other options other than granting four (4) variances.

Hearing no further comments, he called for a motion on each variance request.

Ron Mabra made the motion to deny Variance #1. Larry Blanks seconded the motion. The motion for denial unanimously passed 4-0. Tom Mahon was absent.

Larry Blanks made the motion to deny Variance #2. Ron Mabra seconded the motion. The motion for denial unanimously passed 4-0. Tom Mahon was absent.

Chairman Beckwith made the motion to deny Variance #3. Ron Mabra seconded the motion. The motion for denial unanimously passed 4-0. Tom Mahon was absent.

Ron Mabra made the motion to deny Variance #4. Chairman Beckwith seconded the motion. The motion for denial unanimously passed 4-0. Tom Mahon was absent.

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4. **Consideration of Petition No. A-527-02. Eric K. and Beth S. Johnson, Owners/Agents, request a 25 foot Variance to reduce the side yard setback (North property line) from a minimum of 50 feet to a minimum of 25 feet to construct a detached garage. This property is located in Land Lot 147 of 7th District, fronts on Trickum Creek Road, and is zoned A-R.**

Eric Johnson advised that he started this project after careful consideration in choosing the existing location on the subject property. He reported that he chose the existing location due to the narrowness of the lot and the topography around the house which slopes away from the house. He said he poured a 24 foot by 40 foot slab. He remarked that he travels with Delta Airlines and did not pursue building at that time. He commented that when he pursued building the detached garage that he was made aware that he needed a building permit. He went on to say that he started the building permit application and was advised that there was a problem with the setback which he had no knowledge of. He reported that he had a letter from the affected adjacent property owner to the north who is in agreement to the project. He presented pictures showing the topography around the house to illustrate his hardship.

Chairman Beckwith asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition of the petition. Hearing none and with no rebuttal required, he closed the floor from public comments.

David Bartosh made a motion to deny the petition for discussion purposes. Chairman Beckwith seconded the motion.

Mr. Bartosh stated he understood the expense as it is to date, and the confusion over the setback requirement. He commented that there were too many obvious alternatives other than granting the variance request.

Chairman Beckwith advised that granting a variance should not be for a convenience and that there seemed to be other alternatives.

Larry Blanks expressed concern about granting a 50% variance on a five (5) acre tract.

Ron Mabra had no comments.

Hearing no further comments, Chairman Beckwith called for the vote. The motion for denial unanimously passed 4-0. Tom Mahon was absent.

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5. **Consideration of rescheduling the December 23, 2002 public hearing to December 16, 2002 due to the Christmas holidays.**

Larry Blanks made the motion to reschedule the public hearing to December 16, 2002. Chairman Beckwith seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent.

Chairman Beckwith asked Staff to reschedule the November public hearing from November 25, 2002 to November 18, 2002. Staff advised that they would see if the Public Meeting Room was available for November 18, 2002 and notify the Z.B.A. of their findings.

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Chairman Beckwith asked if there was any further business.

Kathy Zeitler advised that the September Public Hearing had been canceled due to the lack of applications.

There being no further business, Larry Blanks made the motion to adjourn the meeting. Chairman Beckwith seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent. The meeting adjourned at 8:40 P.M.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

BILL BECKWITH
CHAIRMAN

ROBYN S. WILSON
SECRETARY