

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on March 24, 2003 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

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

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Kathy Zeitler, Director of Zoning/Zoning Administrator  
Bill McNally, County Attorney  
Delores Harrison, Zoning Technician

**STAFF ABSENT:** Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

**Welcome and Call to Order:**

Chairman Bartosh called the meeting to order. He asked everyone to remember our troops, their families, and the victims of the war in Iraq, and then led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present.

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**1. Consideration of the Minutes of the meeting held on February 24, 2003.**

Bill Beckwith made the motion to approve the Minutes as circulated. Tom Mahon seconded the motion. The motion unanimously passed 5-0.

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

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**2. Consideration of Petition No. A-531-03, Dr. Anthony F. Lawson and John E. Lawson, Owners, and Gerhardt Gerard with Tiernan & Patrylo, Inc., Agent, request a 31 foot Variance to reduce the setback from S.R. 74 South for impervious areas from 50 feet to 19 feet to allow construction of a pedestrian walkway and handicap access from the parking area to the rear of the existing structure to the front of the building, a proposed medical office development. This property is located in Land Lot 18 of the 6<sup>th</sup> District, is zoned O-I, and fronts on S.R. 74 South and Redwine Road.**

Dr. Anthony F. Lawson, Owner, stated he and his father, also an owner, are here to make the initial statement to uphold his constitutional right to property and proceed to hopefully find a meeting for all.

Gerhardt Gerard, Agent, stated that as a continuation of last month's meeting, they have measured and presented a detail of the site plan with a preliminary design to give an idea of what the conditions will look like. He said that they also have a larger scale drawing being presented. He said that they are requesting a variance of impervious material setback from 50 feet to enough of a distance to allow a three (3) foot wide sidewalk in front of the existing steps. He explained that the survey was somewhat inaccurate because the 19 feet came from the surveyor, and was about 18 inches off, so they need 17 feet 6 inches as actually measured, which is a variance of 33 feet rather than 31 feet.

Chairman Bartosh asked if there was anything else Mr. Gerard would like to present.

Mr. Gerard advised that was all he had at this time.

Larry Blanks asked for clarification about the survey being off and that the proposed distance from the property line has been revised from 19 feet to 17 feet 6 inches.

Mr. Gerard verified that this was correct in order to allow for a three (3) foot sidewalk in front of the existing steps.

Chairman Bartosh asked Mr. Gerard if he had considered coming in from the side instead of the front of the building.

Mr. Gerard replied that a tree would have to be cut down on the west side. He added that they did not think this was the best option.

Dr. Lawson referenced revised comments from the Engineering Department and asked if the Z.B.A. had a copy.

Chairman Bartosh replied that they did have a copy.

Dr. Lawson presented a letter from Zack Taylor of the Road Department showing that in June of 2000 that approximately 15 feet of property was taken for the widening of S.R. 74 which made it closer to the road.

Mr. Blanks asked Dr. Lawson if he was the owner at that time.

Dr. Lawson replied no he was not.

Tom Mahon asked if the ramp was still proposed for the front.

Dr. Lawson replied that this was correct.

Mr. Mahon asked to see the picture indicating the ramp and what it was going to look like. He clarified that the pervious area would become an impervious walkway with a ramp. He asked why an impervious walkway area was preferred, when the ramp could be utilized for both and could be placed along the whole side of the house rather than the front.

Dr. Lawson advised that the ramp would be less preferable for all patients, not just the handicap patients. He said that for privacy reasons he did not want the ramp to run along the whole side of the building because it would be next to the exam rooms.

Mr. Blanks remarked that coming from the rear of the building, there would be a sidewalk adjacent to the house made out of concrete which comes up to a ramp which is impervious up to the front door.

Mr. Mahon pointed out that there were two (2) things which the Z.B.A. must consider, a pervious walkway and a ramp in the front.

Dr. Lawson confirmed that it was an impervious walkway and a ramp in the front. He reported that there was access for the handicapped and the ambulatory.

Mr. Gerard added that they did consider using an impervious material for the walkway. He said that they got the literature and a sample of the product, however there are indentations of about 1" by 2" on every corner which made the walking surface unlevel, and due to medical use, was not the best material to use.

Chairman Bartosh 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.

Julie Matulia of 190 Manor Drive stated she was neither in favor of or in opposition to the request. She said she lived approximately 1.50 miles south of the subject property. She remarked that she wanted to communicate her views to the Z.B.A. about how important impervious and pervious surfaces are in relation to the areas that are developing on these corners, since this is the first one. She commented that she was thrilled to hear the Z.B.A. speak about impervious and pervious surfaces which is such a concern. She said that this property would set a precedent for the other corners. She went on to say that there are a lot of issues with rainwater because of the school playground. She inquired about a reduction of the landscaping. She stated that she was very concerned about keeping the area green which is why she is here.

Dr. Lawson commented that the citizen's concern is warranted. He reported that the green space reduction had been withdrawn. He added that with the old growth trees that the subject property is in excess of the County requirements. In reference to the current development, he said it was his belief that the B.O.C. had already set the tone for the development of the corner and he is wholly committed to keeping the subject property as an office as long as there is not undue hardship.

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

Larry Blanks made a motion to approve the petition with the modification from 19 feet to 17 feet from the front property line to accommodate a three (3) foot sidewalk.

Chairman Bartosh seconded the motion for the sake of discussion.

Mr. Blanks pointed out that this property has a lot of unique characteristics and they have done a lot of work to leave the property as historically accurate and still utilize it in a business sense. He went on to say he thinks that the unique situation with this property warrants granting the variance.

Mr. Mahon stated he still stands on his belief that there are alternatives to granting a variance.

Bill Beckwith asked if any other materials that are pervious that could be used even along the side of the building which would not require a 33 foot variance to the Overlay requirement. He stated one company that provides this type of material had been mentioned. He asked if this material had been inspected.

Mr. Gerard confirmed he did a search and there is some impervious concrete that was used on campus at Rolling Green, Kentucky, however after checking with local companies, it is not available, or if it is, the person he talked to didn't know of that product. He stated they were not able to find any particular product available in this area that provided a level walking surface that was pervious.

Dr. Lawson said they talked to the Engineering Department to get their ideas and the Engineering Department were the ones to suggest paver stones, provided they meet the specifications for pervious. He added that other possibilities would be mulch or loose gravel stone, but those were considered to too high risk, and women in heels would not be able to walk on any of these surfaces.

Mr. Beckwith asked Mrs. Zeitler about the materials that the P.C. had discussed in a previous meeting regarding pervious materials available.

Mrs. Zeitler stated that the Engineering Department has the specifications for the different materials and if someone chose to use these materials they would need to meet the required specifications. She commented that she was a little confused because Dr. Lawson did fax over something to Staff stating that they were going to use paver bricks on a sand bed, and now Dr. Lawson has made another revision for a sidewalk instead of the paver bricks.

Dr. Lawson stated it is an option to give more appeal and also to prevent an actual paved surface, but the brick paving stones they wanted to use were considered impervious (they did not meet the Engineering Department specifications for pervious), so he didn't bring that up, however he would consider it an option if it sits better with the Z.B.A..

Mr. Beckwith asked about the placement of a sidewalk on the northern side. He suggested that the ramp could be redesigned to resolve the situation, and that's what is a concern because there appear to be alternatives.

Dr. Lawson pointed out that even the handicap ramp on the side of the house and any access from that side would require some variance, and there is no way into the house except from the rear that doesn't require a variance.

Chairman Bartosh asked for Dr. Lawson to advise if it is possible for the ramp to come out of the side of the house and run along the house to the rear. He added that by doing so that there would be a lot less area utilized with pervious surface.

Dr. Lawson advised that the ramp would require a variance anywhere on the side.

Mr. Beckwith stated that it just seems to him that there are other alternatives than the design shown.

Dr. Lawson stated that there very well may be, but even with a redesign the walkway will still be within the 50 foot impervious setback.

Mr. Beckwith asked to be shown how someone in a wheel chair would access the ramp.

Dr. Lawson advised that the ramp would need to access the front porch, and the front sidewalk will just replace the existing sidewalk.

Chairman Bartosh stated that if the ramp were designed to stretch to the back and made of impervious material, it looks like you would be able to make it work without a variance.

Dr. Lawson advised that he has already met with the Engineering Department and they didn't discuss the material for the ramp. He said that even with a ramp made of decking materials so the water could drip through it would still be considered impervious, because not enough water could get through and drain to the soil. He added that it all has to do with how rapidly the water can be disbursed.

Chairman Bartosh asked Mrs. Zeitler about the ramp with decking and having bare ground under the ramp as being pervious or impervious.

Mrs. Zeitler advised that Engineering would have to make that determination, but if it is off the ground like a deck and would drain, it could, in her opinion, be pervious.

Chairman Bartosh hoped that after the last meeting that other options would be considered and he believed that some of the other members are having these same concerns.

Mr. Gerard advised that there is still a need for a sidewalk to the front entrance and that is impervious material, regardless there is a need for the ramp to go in the setback.

Mr. Blanks asked Mr. Gerard to point out the 50 foot setback line on his plan, showing what is required. He also asked if they put in a ramp and had it fixed so the entry point goes into the front, then there would still be a need for a variance. Regardless, he remarked that this is a very attractive project for that area and approval was recommended because of the applicant trying to preserve the home instead of tearing it down and rebuilding something that would be less appealing in that area. He advised that he thinks that the project is unique enough to allow the variance and the petitioner to proceed with his project.

Mr. Mahon asked Mr. Gerard to show the closest point to the highway on this whole project. He added that he was just talking about the ramp, showing the closest point to the highway, and what was the difference.

Mr. Gerard stated that the difference is 17 feet 6 inches to 34 feet or 32 feet roughly.

Mr. Blanks was unsure about the discussion of the 17 feet, remarking that anytime something is being done in the front, that the closest number is what is used. He asked if he understood correctly.

Mrs. Zeitler clarified it was the measurement closest to the property line.

Mr. Blanks said that even though nothing is being done on the south end of the porch you still have to take that into consideration as being the closest point.

Mrs. Zeitler explained that there is an existing walkway. She added that she has a photograph that it is a flagstone type and now it is going to be a sidewalk.

Dr. Lawson confirmed that it could be an impervious type of brick paver.

Mr. Mahon explained that this is what the Z.B.A. is talking about because that is impervious.

Dr. Lawson stated that the flagstone is also considered impervious.

Mrs. Zeitler explained that the brick pavers and the flagstone are not considered to be pervious unless they meet Engineering Department specifications for that type of material. She explained that the existing walkway is not subject to the Overlay requirements because it is used for residential. She advised that once it is proposed for a nonresidential use, then the Overlay regulations apply and any changes to the walkway, or even if it was left as is, would need a variance if it was impervious material.

Mr. Mahon confirmed that the existing walkway must be changed to become a pervious walkway.

Mrs. Zeitler replied either that or get variance approval.

Mr. Beckwith asked if it could be left alone.

Mrs. Zeitler advised it could be left alone as long as a variance was approved to remain as an impervious material within the 50 foot setback for impervious.

Mr. Blanks asked if any improvements could be made to the walkway if it were to remain.

Mrs. Zeitler explained that once the property was rezoned to nonresidential, anything existing or proposed for nonresidential use of the property has to comply with the 50 foot setback for impervious, so if it is within that setback it would need a variance or it would have to be changed to a pervious type material.

Mr. Beckwith clarified that if the Z.B.A. grants the variance that there would have to be another request for the sidewalk.

Attorney McNally advised that once the petitioner, who owned the land at the time it was residential, rezoned the property to O-I then this removed the ability to continue to utilize the walkway as it existed because it is no longer a residence. He added that had it continued as a residence, then the applicant could have continued to utilize the walkway. He explained that now Dr. Lawson is in the position of where he has to either comply or a variance must be granted in order for him to use the building as it sits and for him to make the walkway comply with those regulations.

Mr. Beckwith asked if it mattered that G.D.O.T. has moved the highway closer. He asked if any property was taken or if it was a setback differential.

Attorney McNally replied that it was a consideration that is in the petitioner's favor since the roadway did take away some of the available property. He added that it is an existing building that is desirable to be maintained for the aesthetic pleasure of the County so these things come into consideration when the Z.B.A. is looking at this.

Chairman Bartosh clarified with Dr. Lawson that he is wanting to leave the walkway as is in the front which is an impervious walkway.

Dr. Lawson replied that the existing walkway is an impervious flagstone walkway which is too unsteady for office use, so it will be either brick pavers or a concrete sidewalk, but both of those options as well as the existing walkway are impervious.

Mr. Blanks verified that the existing walkway is flagstone which is classified as impervious although there are cracks, dirt, and grass all the way through it.

Dr. Lawson replied correct.

Mr. Beckwith said that Mr. Blanks had sort of changed his mind and he was leaning toward granting the variance because of the beauty of the home, its location, and its uniqueness, which is the key. He added that it is a unique building in the County and to have it used and not torn down is important.

Chairman Bartosh advised that it is not up to the Z.B.A. to design the impervious walkway.

Attorney McNally replied that the flagstone should not be utilized for pedestrian traffic, and even though it is beautiful to look at it forms a bit of liability when you have a lot of people going in and out who could possibly fall down. He pointed out that the impervious or pervious area affected by the walkway is very small.

Ron Mabra concurred that the property was unique and does fit the criteria for granting a variance.

Chairman Bartosh called for the vote. The motion unanimously passed 5-0.

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**3. Consideration of Petition No. A-532-03, Flat Rock A.M.E. Church, Owner, and John Stokes, Agent, request an Enlargement of a Nonconforming Structure to increase the existing fellowship hall from 517.44 square feet to 2,077.68 square feet. This property is located in Land Lot 26 of the 7<sup>th</sup> District, fronts on Old Chapel Lane, and is zoned R-40.**

John Stokes stated that he was a steward at Flat Rock A.M.E. Church and was representing the church regarding the proposed expansion. He advised that the existing building was formerly an old schoolhouse. He reported that Flat Rock was the oldest black church in the County. He said that over the years they had problems with the old deeds because they were difficult to read, so property was taken from the church when the adjacent subdivision was developed, however the church did not pursue trying to get the lost property back. He said that the existing building was used as a fellowship hall and does not have running water. He stated that the expansion would have running water and restrooms. He advised that the church building has only a one (1) stall restroom, which is inadequate when the church has visitors.

Mr. Stokes presented the Z.B.A. a photograph showing the building being used as a schoolhouse in 1955, and also showed a hand drawn sketch of the proposed building with the addition. He reported that the existing building had been remodeled. He said that the church did not own the adequate

amount of property to tear down the fellowship hall, and by being grandfathered in they are requesting an expansion of six (6) feet on each side and in the front plus an upper level. He added that they would comply with any requirements of the County such as landscaping and septic system which has been approved by the Environmental Health Department. He advised that there is no right-of-way for Old Chapel Lane and the church's property does run to the other side of the road. He stated that he thought the road was paved in the 1970's.

Chairman Bartosh asked Mr. Stokes if he understood that if the request was granted that the expansion would have to comply with County regulations.

Mr. Stokes replied yes sir. He added that he had talked with the church board and stated that they will comply the County regulations.

Chairman Bartosh asked Mr. Stokes if he also understood that if the request was granted that the expansion would have to maintain the exact footprint as presented, including the setbacks.

Mr. Stokes replied yes sir.

Chairman Bartosh asked if there was anyone to speak in favor of the petition. He confirmed that the church had a lot of support present in the audience.

Pastor Wallace Jones said he was the pastor of the church. He stated that the desire of the congregation is to honor one of their former deceased members, Brother Esric Glover, who served faithfully for many years. He remarked that he church board had granted a petition of recognition when Brother Glover died, and the addition would be a very honorable gift to the community to honor Brother Glover. He asked that the Z.B.A. be gracious and grant the request.

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

Tom Mahon made a motion to approve the petition as submitted including the indicated setbacks and the square footage with the building footprint to remain as indicated on the plan submitted. Ron Mabra seconded the motion.

Chairman Bartosh asked Mr. Stokes if he understood the specifics of the motion as stated.

Mr. Stokes replied yes sir.

Larry Blanks stated by granting the request, the Z.B.A. is authorizing a nonconforming building to expand, but it doesn't give approval to build the building, only approval to proceed forward with getting the necessary approvals for building.

Mr. Mahon said he had no problem with the request as long as the church understood it must comply with County regulations. He added that he remembered when Old Chapel Lane was a dirt road.

Bill Beckwith remarked that it was a fitting tribute to the community and congregation and he heartily supported approval of the request.

Mr. Mabra concurred that the proposed addition would be a great asset to the community.

At this time, Chairman Bartosh called for the vote. The motion unanimously passed 5-0.

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Chairman Bartosh called for a recess at 8:03 P.M. He reconvened the public hearing at 8:08 P.M.

**4. Consideration of Petition No. A-533-03, Larry and Beverly Smithson, Owners/Agents, request a 20 foot Variance to reduce the side yard setback from a minimum of 50 feet to a minimum of 30 feet and a Variance to locate a detached garage (accessory structure) without a breezeway in the front yard. This property is located in Land Lot 98 of the 5<sup>th</sup> District, fronts on Old Norton Road, and is zoned A-R.**

Beverly Smithson, Owner, stated that the garage is needed for their 14 year old twins to work on cars. She explained that the problem with the property is that it is zoned A-R but they only own a little over 1.5 acres. She said that due to the way the property was split that the garage could not be on one side because it would be on their neighbor's property. She confirmed that the septic system was located on the other side of the house. She reported that there was a long driveway and a slope which goes down to the creek, plus the floodplain, and the house backed up into the slope of the property so the garage can not be built to the rear of the house. She explained that due to the slope and grade that there is a sloping walkway with three (3) steps going to the existing attached garage. She reported that due to the narrowness of the lot the detached garage would be in front of the house if they were required to comply with the 50 foot setback. She went on to say that due to the existing tree line that the detached garage would not be seen from the road. She confirmed that the garage would be shaped like the existing house and have the same siding and color. She pointed out that the property to the south has a house built very close to their property line but the proposed garage would be to the rear of their neighbor's existing house.

Chairman Bartosh 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, he closed the floor from public comments.

Larry Blanks made a motion to approve the petition. Ron Mabra seconded the motion.

Mr. Blanks pointed out that the lay of the land was unique. He added that a lot of consideration had been given for the best location for the detached garage and it doesn't impact any of the neighbors or any of the views.

Tom Mahon concurred with Mr. Blanks.

Bill Beckwith stated that the proposed detached garage could possibly comply with the 50 foot side yard setback requirements. He asked if there was another location for the proposed detached garage which would not encroach either side building line.

Mrs. Smithson replied that due to the slope, the proposed detached garage could not be located any closer to the house. She confirmed that the proposed location was the only level place on the property.

Ron Mabra concurred with Mr. Blanks and Mr. Mahon.

Hearing no further comments, Chairman Bartosh called for the vote. The motion unanimously passed 5-0.

Chairman Bartosh asked if there was any further business.

Kathy Zeitler advised that one (1) application had been submitted for the April Public Hearing.

There being no further business, Bill Beckwith made the motion to adjourn the meeting. Larry Blanks seconded the motion. The motion unanimously passed (5-0). The meeting adjourned at 8:18 P.M.



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**March 24, 2003**

**ZONING BOARD OF APPEALS**  
**OF**  
**FAYETTE COUNTY**

Respectfully submitted by:

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**DAVID BARTOSH**  
**CHAIRMAN**

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**DELORES HARRISON**  
**ZONING TECHNICIAN**