

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on June 23, 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
Larry Blanks

MEMBERS ABSENT: Tom Mahon

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

Welcome and Call to Order:

Chairman Bartosh 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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1. Consideration of the Minutes of the meeting held on May 19, 2003.

Larry Blanks made the motion to approve the Minutes as circulated. Ron Mabra seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent.

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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-536-03, Calvin D. and Gloria Lowery, Owners, and Calvin D. Lowery, Agent, request a 13 foot Variance to reduce the rear yard setback from a minimum of 30 feet to a minimum of 17 feet to allow an existing detached garage to remain. This property is located in Land Lot 219 of the 5th District, fronts on Hwy. 279, and is zoned R-45.

Attorney Calvin Lowery stated that he was co-owner with his wife, Gloria Lowery, of the property which is being considered. He said he first bought land in Fayette County to build a house about nine (9) to ten (10) years ago and in the process of building the house was continuously hassled by the building inspector. He remarked that one inspector refused to give him the Certificate of Occupancy after it was completed because the driveway was not poured. He commented that prior to that the same inspector had tried to turn down the bracing in the ceiling to say that he needed 2 by 8 braces rather than 2 by 6 braces. He said that one thing led to another and he purchased some land from his next door neighbor because of an old rat and snake infested barn that was on the property. He went on to say that he had torn down the barn to get rid of the snakes and rats. He stated that he discovered that Fayette County had placed a "do not ever issue a building permit" on his land. He remarked that he has had a total of five (5) surveys done on his land since he purchased his property and he recorded the plat, then Fayette County told him that he needed to resurvey the entire subdivision, which after doing some research he discovered that it is called the Flaum Subdivision. He reported that he got the property resurveyed according to Mrs. Zeitler, who has been very nice through this process, and the revised final plat is pending approval by the County. He asked Mrs. Zeitler if this was correct.

Kathy Zeitler stated that a variance is needed prior to County approval because of the existing encroachment.

Attorney Lowery said that his lot was pie shaped with a 45 degree angle.

Chairman Bartosh asked Attorney Lowery to clarify the pie shape.

Attorney Lowery confirmed that the front of the lot facing Hwy. 279 is square but the rear of the lot is like a 45 degree pie shape if you just look at one half of a piece of pie. He said that when he measured it that there was a 30 foot setback, but according to the surveyor you measure from the corner of the lot to the structure. He added that you would get a different measurement on different days if you do it like he was doing it, which is from the straight back of the garage building back to the property line, because of not knowing how to go back to the line since it is pie shaped. He reported that the whole process has been a new experience to him and, as an Attorney, he has never heard of anything requiring him to get an entire survey of the three (3) different lots out there, a subdivision plat for a subdivision revision but then they said no that it was only the two (2) lots affected, the one he bought the land from and his lot where the land was added. He said that it would be a severe financial hardship for him if he was to have to build the building and of course he has some land, but the land when he originally built the house, Rick Fehr told him he needed land for a backup septic tank so he has the land in the back, but it was his understanding that the land was for the backup septic tank even though there is not that much on that side anyway, but the area where he built the two car garage is close to his house and driveway, so in order to have built it on the other side it would have caused a severe financial hardship and the yard would be nothing but concrete. He confirmed that his back door neighbors are quite a distance from him, about 200 to 300 feet from the property line so it will not cause any deterioration, as a matter of fact, he has caused an increase in property values. He added that it would not cause a decrease in anyone's property values nor is it infringing upon any one property with the back door neighbor's house being about 300 feet from the property line. He said he had spoken with them and they have no disagreement with what has been done. He stated that what he had done would not cause any County health problems or any kind of interference or encroachment on anyone else's property. He commented that his neighbor was here and the County would not issue him a building permit for him to do something to his house, but they did issue a temporary building permit until Attorney Lowery goes out and spends \$60,000 to \$70,000 to get the whole two (2) plots of land resurveyed, which he did, and it cost him tremendously.

Larry Blanks asked Attorney Lowery to explain why he is before the Z.B.A. tonight.

Attorney Lowery replied that he is here today because the zoning requires a 40 foot setback but the plat requires a 30 foot setback and one side of the back of his building comes to about 17 feet and the other is well over 30 feet per his surveyor. He added that the side has the proper setback.

Chairman Bartosh advised that they have a plat indicating the structures and setbacks. He asked Attorney Lowery if there was anything else he would like to add.

Attorney Lowery replied that was basically it and he would be glad to answer any questions.

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

Donald Hylton of 646 Hwy. 279 stated he was the next door neighbor of Attorney Lowery. He said he wanted to state that he is in favor of Attorney Lowery's request. He commented that he too was affected by the fact that they were required to survey the entire subdivision in order to get a building permit to do work on the property, the frame house which he and his wife currently own. He remarked that he lives next door to Attorney Lowery and everything that Attorney Lowery has done has enhanced the property and has enhanced his property and the house next door and what is behind them. He added that it is very consistent with the upbeat neighborhood and what he has done is very consistent with the rest of the neighborhood so he supports it.

Chairman Bartosh stated that he had overlooked an item. He advised Attorney Lowery that there was not a complete board present tonight, and prior to hearing the petition he should have been given the option to wait for a full board or not, and he asked Attorney Lowery what his intentions were. He apologized for the oversight.

Attorney Lowery replied that it was not a problem and he was willing to go ahead tonight even though there is one member missing.

Chairman Bartosh 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. He asked for a motion before discussion.

Larry Blanks asked if the County was all clear on the permits and everything and this is the only pending item.

Mrs. Zeitler replied that as far as the building permits go, the County would not be able to issue building permits until approval of the revised final plat since he reconfigured the lots, and the encroachment is holding up approval of the revised final plat, so the existing building either needed a setback variance by the Z.B.A., or the building needed to come into compliance with the rear setback.

Mr. Blanks asked if everything is complete as far as the out buildings.

Mrs. Zeitler replied that she understood that the detached garage and the pool house are completed but constructed without required building permits, and a permit could not be issued for the detached garage until the encroachment issue is resolved, either by a variance approval or by coming into compliance, then the County can issue a permit for it.

Mr. Blanks asked if by approving the variance were all of the buildings which had previously been constructed without permits does that automatically clear everything with the buildings whether they were inspected or not.

Mrs. Zeitler replied that as far as Zoning is concerned, the buildings will comply with the size and location for accessory structures with the exception of the encroachment into the rear setback of the detached garage.

Mr. Blanks said that there are no assumptions beyond just what is clearly stated on the variance. He stated that the Z.B.A. had had variances before that if the variance was approved, it automatically approved some other non-standard things and he just wanted to make sure the Z.B.A. is not into that.

Mrs. Zeitler replied that it would only be the Zoning issues that the Z.B.A. is addressing. She stated that as far as the buildings went, they would have to have building inspections and be issued a Certificate of Occupancy on the buildings, which have to be built to code. She added that she did not know what the status of the inspections of the buildings were.

Mr. Blanks confirmed that the variance was not an automatic approval of acceptance of the buildings.

Larry Blanks made the motion to approve the petition. Chairman Bartosh seconded the motion for the sake of discussion.

Mr. Blanks stated that ignorance of the Zoning Ordinance was not an excuse, and obviously the permits should have been applied for, and if all of the permits had been applied for and then brought to the Z.B.A. prior to the construction of the building, that he would not have had a problem at that time approving a 13 foot variance on this particular piece. He added that looking at this in arrears, he would not have had a problem prior to it being constructed, so to be consistent, he does not have a problem with it now, but it doesn't excuse the fact that it was built without a permit.

Bill Beckwith said he was listening to Mr. Blanks and just because of that the petitioner admitted that he did not make the correct measurement which sounded like it was a self-imposed situation where he made the mistake. He advised that in the past the Z.B.A. had voted on situations similar to this. He stated that it was not a matter of relief because it did not meet any of the six (6) criteria that have been established. He said that from his point of view that this was a situation which had been established by the petitioner and he should have been more diligent in what took place. He added that he could not support the motion.

Ron Mabra remarked that the Z.B.A. has been faced with this several times and the ordinance explains that there should not be an encroachment. He said that if the Z.B.A. approved the petition that they would be setting a precedent. He also added that he could not support the motion.

Chairman Bartosh commented that the Z.B.A. had turned down other petitioners in the past who have failed to get a building permit. He advised that the permitting process is there for a reason which is to head off issues exactly like this. He said that the Z.B.A. is looking at a property that had plenty of location options available had the permitting process taken place. He reported that there were two (2) incidences of not consulting the County and getting the proper permits. He added that it was not with joy, and that this was not pleasing to him whatsoever, but he had to concur with the other two (2) gentlemen.

Attorney Lowery asked if he could speak.

Chairman Bartosh advised Attorney Lowery that he had his opportunity to speak and the floor had been closed from comments. He said that there was no opposition or rebuttal. He stated that each Z.B.A. member had read through the petition very carefully.

Attorney Lowery stated that there was a situation where they would not issue a building permit because of requiring the whole subdivision to be resurveyed.

Chairman Bartosh said that the petitioner had stated that issue was that the County would not allow him to get a permit until the property was replatted.

Mrs. Zeitler explained that when you reconfigure a lot in a subdivision, you need to have a survey done of the two (2) lots affected to show how they are being reconfigured, and submit that revised final plat to the County for approval if any of the lots are under five (5) acres in size. She stated that this is what was not done, therefore the County could not issue any building permits until the revised final plat was approved because the property lines had changed. She added that a revised final plat had now been submitted to the County for approval, however the encroachment was there and the revised plat could not be approved until the variance was either approved, or the building was brought into compliance.

Chairman Bartosh said that whichever way that would have transpired that the decision was made to put the building up without being in compliance.

Mrs. Zeitler stated that the building was constructed without a permit and if a permit had been applied for with that location being shown, the County would not have issued a permit until the revised final plat was approved and recorded, and then the building would have been required to comply with the setback requirements before a building permit could be issued, and he would not be before the Z.B.A. tonight asking for a variance.

Mr. Blanks asked if the petitioner had requested this to be built and brought it before the Z.B.A. that it would have been more than just approving a 13 foot variance at that time.

Mrs. Zeitler replied that no, that was not what she had said. She explained that if the petitioner had applied for a building permit instead of building it without a permit, the County would have seen that he had changed the property lines, and a permit would not have been issued until a revised final plat was approved by the County and then the building permit could be issued, but the structure would

be required to comply with the setbacks.

Mr. Blanks verified that there is a revised final plat filed now.

Mrs. Zeitler confirmed that there is a revised final plat submitted and is pending approval provided the encroachment issue is resolved.

Chairman Bartosh asked Attorney Lowery to come up and make a closing statement prior to the vote.

Attorney Lowery said that after closing on his lot he bought the other portion from the neighbor that was living there, it was a old frame brick house. He stated that two (2) lots were for sale. He remarked that when he bought the lot he had his portion of the land resurveyed and a plat was done. He commented that the surveyor recorded the plat at the Courthouse showing all of his land and the way the home was situated on the plat.

Chairman Bartosh asked what this had to do with not obtaining the permits which would have headed off this problem to begin with.

Attorney Lowery stated that he could not obtain a permit because they had it on his land to never issue a building permit.

Mrs. Zeitler advised that there is a note in the subdivision plat file to not issue any building permits because the lots had been reconfigured, and a revised final plat had not been submitted to the County and approved as required. She said a revised final plat approval had to be done first, and that you can't just go record it at the Courthouse, if the lot is under five (5) acres in size then it has to go through the County for a final plat approval. She stated that County departments had to sign off on it before it is recorded, and this was not done when the lots were reconfigured and that was what the hold was for.

Attorney Lowery replied that now he realized that. He said that when he first moved down here he had no idea that two (2) separate lots was considered a subdivision.

Mrs. Zeitler clarified that the entire subdivision actually consists of three (3) lots, but only two (2) lots were reconfigured and were required to have a revised final plat.

Chairman Bartosh said that he understood the emotion and the vested financial interest, but a lot of the issues being discussed had nothing to do with the Z.B.A., because the basic issue is, had the procedures been followed, the Z.B.A. would not be hearing this petition.

Attorney Lowery stated he could not get a building permit.

Chairman Bartosh replied that he could get a building permit by following the procedures set forth by the County and following the ordinances by the County.

Attorney Lowery asked Chairman Bartosh if he wanted to buy his house so he could move out of the County because the Z.B.A. was leaving him no choice.

Chairman Bartosh stated that the Z.B.A. did not create this problem.

Attorney Lowery replied yes you did.

Mrs. Zeitler reiterated that the County could issue a building permit upon approval of the revised final plat. She stated that when it became apparent that a revised plat was recorded without County approval that was when the hold was placed on the property.

Chairman Bartosh confirmed that the Z.B.A. is well aware of everything and had everything been followed properly, and had the petitioner consulted with the County, then the Z.B.A. would not be looking at this tonight.

Mr. Mabra advised that the Z.B.A. takes everything seriously, but the only thing the Z.B.A. can vote on is the application before them, and the Z.B.A. understood that there were a lot of underlying circumstances that the Z.B.A. could not bring into their decision because the Z.B.A. must go by the Zoning Ordinance. He reported that \$300,000 and \$400,000 homes have had to be relocated because of these same situations.

Attorney Lowery stated that there was no opposition to what he had done.

Mr. Mabra replied that sometimes there is no opposition, but they had to go with the criteria in the Zoning Ordinance.

Attorney Lowery said that since this had started that he has had at least 10 people come to him and state that they did not get a building permit to build anything.

Chairman Bartosh remarked that he could name about 10 people who did not get building permits and to date those buildings are not sitting on those properties anymore.

Attorney Lowery said that the only thing he was asking the Z.B.A. to do was to look at this whole thing objectively, considering everything that had transpired with this piece of property because everything had to be considered, the totality of the whole situation had to be considered, what he has gone through, how much money he has spent to comply with what was required. He explained that when he originally got the property resurveyed for the third time, his thinking and his understanding was that all he had to do was a plat of his property, and the surveyors he called said the same thing. He said that the surveyors had never heard of having to survey any other property other than what you own. He stated that this was his understanding of what he was required to do based upon other surveyors, but he did not look for an ordinance stating that if you purchase land from an adjoining lot then you have got to have the entire subdivision resurveyed, because he never thought that anything like that would be in existence. He reiterated that he purchased the property and tore down a snake and rat infested barn that was over 80 to 100 years old and that is what caused this whole thing.

Mr. Blanks advised that it is not the Z.B.A.'s authority to judge a situation based on all of the criteria which led up to the request for the variance, but to judge whether the variance which is being requested fits the criteria and is in line with what has been approved before, and that granting a variance is basically giving an approval to break the laws.

Attorney Lowery said that he hated to differ with him, but he thought he had met the State minimum requirements and laws.

Chairman Bartosh asked Attorney Grant if debating County law was not inappropriate for the Z.B.A. He said the Z.B.A. was starting to step out of line with what was his understanding of the duties performed by the Z.B.A.

Attorney Grant advised that the Z.B.A. does not have the authority to decide whether the requirement of revising a final plat is improper or not because it is a County requirement.

Chairman Bartosh called for the vote. The motion for approval unanimously failed 0-4, therefore the petition for a variance was denied. Tom Mahon was absent.

Attorney Lowery asked what does this mean.

Chairman Bartosh advised Attorney Lowery to discuss the matter with Staff after the meeting.

Mrs. Zeitler advised that at the end of the Staff Report it is noted that if an existing violation is denied by the Z.B.A. then the Zoning Ordinance gives the petitioner ten (10) days to come into compliance, however an extension could be granted by the Z.B.A. for up to 30 days to come into compliance, which would mean moving the building so it complies with setbacks.

Chairman Bartosh asked if there was a motion to extend the 10 day period to a 30 day period, the maximum allowed.

Bill Beckwith made the motion to allow the 30 day period for the violation to be brought into compliance. Larry Blanks seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent.

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Chairman Bartosh asked if there was any further business.

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

There being no further business, Ron Mabra made the motion to adjourn the meeting. Larry Blanks seconded the motion. The motion unanimously passed 4-0. Tom Mahon was absent. The meeting adjourned at 7:41 P.M.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

DAVID BARTOSH
CHAIRMAN

ROBYN S. WILSON
SECRETARY