

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on July 26, 2010 at 7:00 p.m. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Larry Blanks, Chairman
Vic Bolton, Vice-Chairman
Bill Beckwith
Brian Haren
Scott Gilbert

MEMBERS ABSENT: None

STAFF PRESENT: Dennis S. Dutton, Zoning Administrator
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator
Deputy Harold Meyers

STAFF ABSENT: Pete Frisina, Director of Community Development

GUEST: Steve Brown

Welcome and Call to Order:

Chairman Blanks called the meeting to order. He introduced the Board Members and Staff and confirmed there was a quorum present. He also introduced newly elected County Commissioner, Steve Brown.

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1. Consideration of the Minutes of the Meeting held on June 28, 2010.

Scott Gilbert made the motion to approve the Minutes as circulated. Vic Bolton seconded the motion. The motion unanimously passed 5-0.

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Dennis Dutton read the procedures that would be followed for presentation and opposition for petitions.

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Chairman Blanks stated he would like to hold an Executive Session with the ZBA members and Dennis Dutton to discuss similar petitions that have appeared before the ZBA in the past.

Scott Gilbert made the motion to hold a short Executive Session. Vic Bolton seconded the motion. The motion was unanimously approved. The ZBA went into Executive Session at 7:07 p.m.

Chairman Blanks called the public hearing back to order at 7:14 p.m.

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2. Consideration of Petition No. A-574-10, Alan and Sian Hutson, Owners, and Micah Humphries, Agent, request a ten (10) foot Variance to reduce the west side yard setback from a minimum of 20 feet to a minimum of ten (10) feet to construct a swimming pool. The property is located in Land Lot 73 of the 5th District, fronts on Emerald Lake Drive, and is zoned R-45.

Page 2
July 26, 2010
ZBA Public Hearing

Micah Humphries, Agent, said he was proposing to construct a pool; however, he had run into some topographical challenges, as well as, the placement of the septic system. He pointed out the pool would be located ten (10) feet inside the side yard setback. He presented three (3) letters in support of the project. He commented the pool would not be visible from the street.

James Krissey, President of The Woodlands Homeowners Association, said the plans had been reviewed and approved by the Architectural Review Committee and the Board of Directors.

Chairman Blanks 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, the Chairman closed the floor from public comments.

Bill Beckwith made a motion to approve the petition. Vic Bolton seconded the motion.

Vic Bolton asked if the ZBA had to make a motion and second before discussion.

Chairman Blanks replied this procedure was a directive by the BOC, which is County policy not Robert's Rules of Order.

Vic Bolton stated it would be more beneficial to have discussion and ask questions prior to the motion and second.

Bill Beckwith confirmed the ZBA did not go by Robert's Rules of Order.

Chairman Blanks said this topic could be addressed under New Business.

Vic Bolton remarked he had gone to look at the property and the photographs did not do the property justice. He commented the topo fell from 860 to 810 in one (1) yard, which is pretty aggressive. He asked if the septic was adjacent to the pool.

Micah Humphries confirmed the septic was adjacent to the existing house deck with the drain field lines running toward the lake.

Bill Beckwith asked about the existing driveway in relation to the pool.

Micah Humphries replied part of the existing driveway would be removed.

Vic Bolton asked the status of the adjacent vacant lot.

James Krissey replied the lot has been for sale for the past 12 years.

Bill Beckwith commented the proposed location was the only location for the pool especially due to the steep slope of the lot toward the lake.

Chairman Blanks remarked some lots are not buildable for a pool.

Hearing no further comments, Chairman Blanks called for the vote.

The motion for approval unanimously passed 5-0.

Chairman Blanks advised the petitioner that approval of the Variance did not relieve the property from compliance with all other County requirements.

Page 3
July 26, 2010
ZBA Public Hearing

3. **Consideration of Petition No. A-575-10, Kim Chambers, Agent, and Glory Dyer and Wayne Blackett, Agents, request 1) a seven (7) foot Variance to reduce the east side yard setback from a minimum of 15 feet to a minimum of eight (8) feet to bring the existing pool cabana into compliance; 2) a three (3) foot Variance to reduce the east side yard setback from a minimum of 15 feet to a minimum of 12 feet to bring an existing pool with decking into compliance; and 3) a 15 foot Variance to reduce the west side yard setback from a minimum of 15 feet to a minimum of zero (0) foot to bring an existing concrete patio into compliance. This property is located in Land Lot 229 of the 13th District, fronts on Winterberry Ridge, and is zoned R-45.**

Attorney Michael Brennan, Agent, said the previous owners constructed the pool, cabana, and extended patio on their own. He confirmed his client purchased the property, which was in foreclosure, was purchased "As Is". He stated the client has been rehabbing the property, and as part of this process, she has uncovered many items which had to be corrected. He reported he had sent letters to the five (5) contiguous property owners and has received two (2) phone calls from people who could not approve nor deny, until they spoke with their personal attorney. He added he had received one (1) letter from an adjacent neighbor. He said if the Variances were not approved, the pool, cabana, and patio would have to be removed. He pointed out if the pool had been properly permitted, it would have complied with the setbacks, which were previously measured from the water's edge instead of the pool decking.

Chairman Blanks asked for clarification.

Robyn Wilson explained the ordinance was amended in 2008, to measure the setback from the pool decking instead of the water's edge.

Vic Bolton asked about the cabana.

Robyn Wilson advised the cabana would have been required to comply with the 15 foot setback.

Attorney Michael Brennan said he had spoken with the neighbors and there are no negative consequences to the public good, since the pool, cabana, and patio have been in existence for years. He requested the Variances be approved as requested.

Robyn Wilson advised she had received a letter from the other adjacent neighbor, on Friday, who did not object to the Variances being granted.

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

Shirley Kilgore, President of County Lakes Homeowners Association, stated the cabana was recently expanded. She clarified the Homeowners Association was not in opposition to the Variances.

Attorney Michael Brennan remarked the cabana had been refurbished but, to his knowledge, not expanded.

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

Hearing none and with no rebuttal required, Chairman Blanks closed the floor from public comments.

Chairman Blanks advised each Variance would be considered separately.

Chairman Blanks made a motion to approve the first Variance. Scott Gilbert seconded the motion.

Page 4
July 26, 2010
ZBA Public Hearing

Bill Beckwith asked Attorney Michael Brennan if he was involved in the purchase of the property.

Attorney Michael Brennan replied he was not and that he had not been contacted until after the filing of the petition. He said he had reviewed the closing documents and the property was purchased "As Is" with no survey or disclosure. He commented permitting issues had come up and she hired another contractor.

Vic Bolton remarked he had considered purchasing the adjacent property, but he did not recall seeing the cabana; however, there were a lot of trees. He asked if the pool was built when the house was built.

Attorney Michael Brennan replied, from looking at the documents, the pool was not built when the house was built in 1995.

Vic Bolton stated foreclosures have rapid transactions and people are not doing proper surveys and inspections because they need to close in two (2) weeks. He said the ZBA had to be careful not to set a precedent. He remarked the ZBA must consider if there is a self-induced hardship and will it create a precedent.

Brian Haren asked how long the property had sat empty.

Shirley Kilgore replied approximately three (3) years.

Brian Haren asked Ms. Kilgore when the cabana was expanded.

Shirley Kilgore replied either in late May or early June of this year. She added the cabana was never visible from the street until recently. She said the Homeowners Association contacted Fayette County when the initial work began, which was not permitted.

Scott Gilbert asked if the cabana consisted of 144 square feet before or after the expansion.

Attorney Michael Brennan replied it was his understanding the cabana was not enlarged only refurbished; however, he had no photographs of proof. He added Ms. Chambers could provide the answer for certain, but she travels for her work and could not be present tonight.

Chairman Blanks suggested tabling the petition until next month in order to get answers from the homeowner.

Bill Beckwith and Scott Gilbert concurred.

Vic Bolton stated he was flexible; however, he was concerned since the renovations were not permitted.

Scott Gilbert asked if the motion and second could be withdrawn.

Chairman Blanks withdrew his motion.

Scott Gilbert withdrew his second.

Chairman Blanks made a motion to table the petition until August 23, 2010. Scott Gilbert seconded the motion. The motion to table the petition until August 23, 2010, was unanimously approved 5-0.

Attorney Michael Brennan advised he would be flying back into Atlanta that day.

Page 5
July 26, 2010
ZBA Public Hearing

Chairman Blanks advised this was the ZBA's first time dealing with a foreclosure. He added this would give the homeowner more time to do further research.

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Chairman Blanks asked if there was any further business.

Robyn Wilson advised that one (1) application had been submitted for the August Public Hearing.

Vic Bolton stated he would like clarification on the procedures which the ZBA should follow.

Chairman Blanks said the ZBA was asked to follow this procedure to be consistent with the procedure used by other County boards.

Bill Beckwith explained if a motion was made to approve the petition for discussion that it did not mean the person could not vote in opposition of the petition.

Chairman Blanks remarked once the floor is closed from public comments, the public may not speak unless approved to do so by the Chairman.

Robyn Wilson asked the ZBA if they would like for her to send an email to County Attorney Scott Bennett and ask what the proper procedure is for the ZBA.

Chairman Blanks asked Mrs. Wilson to do so.

Brian Haren clarified it is the property owner's responsibility to ensure a permit is issued.

Dennis Dutton replied it is the property owner's responsibility; however, a building permit may be issued to the homeowner or the contractor.

Chairman Blanks commented the property owner probably assumes the contractor is taking care of being issued a building permit.

Vic Bolton stated it is the closing attorney's responsibility to ensure everything is properly done.

There being no further business, Bill Beckwith made the motion to adjourn the meeting. Vic Bolton seconded the motion. The motion unanimously passed 5-0. The meeting adjourned at 8:00 P.M.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

LARRY BLANKS
CHAIRMAN

ROBYN S. WILSON
SECRETARY

