

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on August 23, 2010, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting 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: Pete Frisina, Director of Community Development
Dennis S. Dutton, Zoning Administrator
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator
Deputy Harold Myers

Welcome and Call to Order:

Chairman Blanks 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 July 26, 2010.

Bill Beckwith made the motion to approve the Minutes as circulated. Scott Gilbert 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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2. Consideration of Petition No. A-575-10, Kim Chambers, Owner, 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) feet 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. This petition was tabled on July 26, 2010, to allow the petitioner more time to further research the history of the site.

Chairman Blanks advised the public hearing portion was held last month and the only purpose tonight is for the ZBA to receive additional information about the subject property in order to render a decision.

Glory Dyer, Agent, stated the ZBA had requested information regarding the pool cabana. She said an inspector had been to the subject property and discovered the pool cabana had not been enlarged. She confirmed the floor had been cut out in the four (4) corners so the inspector could see the slab underneath.

ZBA Public Hearing

Chairman Blanks advised the ZBA understood the property was purchased as a foreclosure; however, the request shall be judged based on the property and not the owner at the time. He asked if the issues involving the septic drain lines had been addressed.

Glory Dyer said she understood a portion of the septic drain lines had been covered and there was a recommendation that four (4) feet of drain lines be added. She added Ms. Chambers does intend to rectify the drain lines.

Vic Bolton clarified the pool cabana had not been enlarged.

Glory Dyer replied the siding of the pool cabana had been repaired.

Vic Bolton asked when the pool and pool cabana were constructed.

Glory Dyer commented the pool and pool cabana were constructed shortly after the house was completed.

Vic Bolton asked if there were any building permits found for the pool and pool cabana.

Dennis Dutton replied no permits were found; however, an aerial photograph from 1999 showed the pool, but the pool cabana could not be seen, but it could have been covered by trees.

Glory Dyer remarked she had spoken with the previous owner. She said the previous owner had the pool and pool cabana constructed approximately ten (10) years ago and that it was permitted.

Brian Haren asked when the pool setback requirements were amended.

Dennis Dutton replied the pool setback was previously measured from the water's edge; however, in 2008, the ordinance was amended to measure the pool setback from the pool decking.

Brian Haren asked if the pool complied with the setback requirements in regards to being measured from the water's edge.

Dennis Dutton replied the pool would meet the setback requirements.

Vic Bolton expressed concern regarding the pool and pool cabana possibly being constructed without building permits.

Glory Dyer noted the property had been abandoned for the past six (6) years and the neighbors are happy to see the house brought back to life. She said she asked the neighbors if they would be affected by the pool and pool cabana being left where it was located and none were bothered by it. She commented Ms. Chambers has spent a lot of money trying to comply and she is here tonight which indicates she has an interest in trying to adhere to the requirements. She asked the ZBA to consider this fact.

Dr. Assie Fuller of 130 Camilla Court stated the property owner had done a wonderful job improving the property. She said she was one (1) of the first property owners to move into this section of the subdivision and the pool and the pool cabana were built after the completion of the house. She added she did not remember if the pool and pool cabana were built at the same time.

Chairman Blanks advised the ZBA that three (3) separate motions would be required.

Variance #1

Scott Gilbert made a motion to approve the variance for the pool cabana for the purpose of discussion. Bill Beckwith seconded the motion.

Bill Beckwith stated the pool cabana was constructed by the previous owner and the property was purchased out of foreclosure "As Is." He said the present owner should not be penalized.

Vic Bolton commented the ZBA was charged with interpreting the Zoning Ordinance and deciding if a hardship exists and if it was self-induced. He expressed concern about setting a precedent and did not want to cause the County a legal problem. He said he had done research and found out it was the responsibility of the closing attorney to ensure everything on the property was in compliance. He added a lender should require an accurate survey to ensure everything is as it is supposed to be. He remarked a lot of houses were in foreclosure and this information should have been disclosed. He expressed concern about having a lot of future "no one told me" and the establishment of a precedent. He remarked when you purchase a piece of property, you inherit everything that goes along with it, including encroachments. He added the ZBA had required other structures to be brought into compliance with the requirements.

Bill Beckwith stated he would hold the previous owner differently and strongly from the current owner. He said the current owner is trying to improve the property and discovered there were several encroachments. He stressed each petition should be treated on an individual basis. He added he understood setting a precedent; however, each case should be looked at individually.

Chairman Blanks stated he could approve the pool cabana if the property was raw property. He added it was not beyond reason to approve such a request. He said it would be a totally different case if the previous owner had constructed the pool and pool cabana without building permits and then requested a Variance.

Scott Gilbert verified a patio, pool, and pool cabana were permitted uses and would be allowed if they met the setback requirements.

Dennis Dutton replied "yes sir."

Scott Gilbert advised the ZBA had established criteria for granting a Variance and four (4) out of the six (6) had been met; however, topography, size, or shape is not a problem because there is plenty of room for these structures to be constructed.

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

The motion for approval of the variance for the pool cabana failed 2-3 with Scott Gilbert, Brian Haren, and Vic Bolton voting in opposition.

Vic Bolton made a motion to deny the variance for the pool cabana. Brian Haren seconded the motion. The motion passed 3-2 with Chairman Blanks and Bill Beckwith voting in opposition.

Robyn Wilson advised the applicant would be required to correct the violation within ten (10) days; however, the ZBA could grant a maximum extension not to exceed 30 days.

Scott Gilbert made the motion to extend the deadline to correct the violation of the pool cabana from ten (10) days to 30 days. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

Variance #2

Chairman Blanks made a motion to approve the variance for the pool. Bill Beckwith seconded the motion.

Vic Bolton said he could support the variance request since it would have complied with the previous setback requirements as measured from the water’s edge when it was constructed.

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

The motion for approval of the variance for the pool was unanimously passed 5-0.

Variance #3

Scott Gilbert made a motion to approve the variance for the concrete patio; however, the motion died for the lack of a second.

Vic Bolton made a motion to deny the variance for the concrete patio. Brian Haren seconded the motion.

Chairman Blanks verified the patio was covering a section of the drain field lines per the Environmental Health Department and bringing the patio into compliance was not an unreasonable request.

Brian Haren verified the property had been surveyed and the concrete patio did not encroach on the adjacent property.

Bill Beckwith stated the concrete patio is a convenience based on the information provided.

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

The motion for denial was unanimously passed 5-0.

Robyn Wilson advised the applicant would be required to correct the violation within ten (10) days; however, the ZBA could grant a maximum extension not to exceed 30 days.

Bill Beckwith verified the 30 days was counted from today’s date.

Bill Beckwith made a motion to extend the deadline to correct the violation of the concrete patio from ten (10) days to 30 days. Vic Bolton seconded the motion. The motion unanimously passed 5-0.

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- 3. **Consideration of Petition No. A-576-10, Weekley Homes, LP, Jeff Barrett, Director of Land Development Operations, Owner, Fayette County Public Works Department, Phil Mallon, Director. Agent, request an eight (8) foot Variance to reduce the front yard setback from a minimum of 40 feet to a minimum of 32 feet due to the proposed realignment of Waterlace Way. This property is located in Land Lot 7 of the 7th District, fronts on Waterlace Way, and is zoned R-40.**

Phil Mallon, Director of Public Works and County Engineer, presented the ZBA with a color coded drawing of the subject property. He explained the blue area is the property boundary, the orange area is the buildable area, and the pink is right-of-way. He said the purpose of the variance request was to correct a hardship being placed on Lot 126 as a result of the construction of Phase I of the West Fayetteville Bypass. He explained as part of the West Fayetteville Bypass, Waterlace Way was being realigned due to safety issues regarding another intersection on the Bypass. He commented as a result of the realignment, the County would be acquiring approximately 0.16 acres from Lot 126. He said once the discussions began with the County about acquiring the additional property from Lot 126, the owner questioned the buildable area remaining for the property, especially since the lot is a corner lot. He pointed out lot lines were shifted between Lot 125 and Lot 126 to assist in the off-set of the take area. He noted with these changes, the buildable area of the lot basically remains the same. He added Lot 126 was the only lot affected by the realignment. He commented the owner is planning on constructing a detached garage to help give the back yard some privacy.

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

Bill Beckwith remarked when the County takes property away from a property owner for right-of-way, the County does not penalize the property owner. He confirmed the proposal is attempting to make the lot as whole as possible.

Chairman Blanks asked Robyn Wilson about the lot not being a lot with two (2) front yards.

Robyn Wilson explained the subject property did not have road frontage along the Bypass; however, there would only be a front yard setback and a side yard setback due to the configuration and curvature of the lot. She pointed out there was common area proposed between Lot 126 and the Bypass.

Hearing no further comments, Bill Beckwith made a motion to approve the petition. Vic Bolton seconded the motion. The motion unanimously passed 5-0.

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Chairman Blanks asked if there was any further business.

Robyn Wilson advised there were no applications submitted for the September Public Hearing.

There being no further business, Scott Gilbert made the motion to adjourn the meeting. Brian Haren seconded the motion. The motion unanimously passed 5-0. The meeting adjourned at 8:04 P.M.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

**LARRY BLANKS
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**