

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on April 25, 2011, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Vic Bolton, Chairman
Bill Beckwith, Vice-Chairman
Larry Blanks
Brian Haren
Tom Mahon

MEMBERS ABSENT: None

STAFF PRESENT: Pete Frisina, Director of Community Development
Dennis S. Dutton, Zoning Administrator
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator
Nancy Howard, Environmental Technician II
Deputy Derrick Brown

Welcome and Call to Order:

Chairman Bolton 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 March 28, 2011.

Larry Blanks made the motion to approve the Minutes as circulated. Tom Mahon 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-580-11, SELAF Haddonstone Holding Company, LLC, Owners, and Jason Wingfield, Agent, reduce the Critical Root Zone from 105 feet to 88 feet and allow less than 30 percent of the Critical Root Zone to be disturbed. This property is located in Land Lot 35 of the 5th District, fronts on Bergen Drive and Haddonstone Drive, and is zoned R-50, as presented by the Stormwater Management Department.

Rick McAllister, Landscape Architect, presented the ZBA with two (2) handouts. He explained one exhibit indicated the buildable area on the lot, the specimen tree, the 105 foot critical root zone, and the 88 foot critical root zone on one side and the other side indicated the buildable area on the lot, house placement, the specimen tree, the 105 foot critical root zone, and the 88 foot critical root zone. He explained the second exhibit is a marketing map indicating the tree as a marketing device on the point of entry sign. He referenced the Site Plan for the proposed amenity area. He also referenced the information from the University of Georgia entitled *Construction Damage Assessments: Trees and Sites* and the Georgia Forestry Commission's publication, *How to Conserve Natural Resources on Construction Sites*. He commented Haddonstone Subdivision was purchased in December, 2009, with all the lots platted and all the roads already constructed. He said this one specimen tree stood out in stature, a 70" diameter Willow Oak tree, which is very rare. He remarked the tree was located in the middle of a residential lot and SELAF recognized the value of such a natural amenity. He noted this tree is probably one of the largest, if not the largest, tree of this type in the County. He reported the tree had already been disturbed from the road which had been developed and also from

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the existing utilities. He confirmed an arborist had come out and gauged the health of the tree which he said was in excellent shape. He reported if the lot were a single-family residential lot, the owner could remove the tree with no repercussions from the County. He said with the amenity area located on this lot, the developer would have control over preserving the tree. He advised post and pre-construction methods would be followed. He said the disturbance and development would be kept to a minimum. He commented there would be a planned health care and maintenance program for the tree to include: professional root pruning, proper irrigation, fertilization, and lightning protection.

Rick McAllister pointed out the variance request complies with the six (6) criteria required to grant a variance. He said the limitations of the critical root zone place a practical difficulty on development. He noted the developer is willing to provide pre and post-construction care for the tree. He stated the tree can be protected for the beauty and natural enjoyment of the community. He commented the removal or possible damage to this tree without professional care would possibly cause detriment to public good in the form of losing a natural resource. He requested the right to protect an aesthetic, natural resource in concert with developing a marketable real estate product in Fayette County by utilizing a natural asset of value that others in the same zoning district would also value and promote for real estate sales. He said the applicant has provided an extremely proactive health care plan including, five (5) years worth of fertilization, professional root pruning, custom mulch and irrigation and lightning protection. He thanked the ZBA for their consideration of the variance request.

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

Paul Dennis of 155 Haddonstone Drive requested the five (5) year plan be a part of the record.

Nancy Howard confirmed the five (5) year plan was a part of the plan and on the record.

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

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

Tom Mahon made the motion to approve the petition and added in his 27 years on the ZBA he had never reviewed a petition for a tree, especially one with lightning protection. Bill Beckwith seconded the motion.

Bill Beckwith remarked he also served on the PC in the development of the Tree Protection Ordinance which took many months. He pointed out if a house was built on the lot, the homeowner could remove the tree.

Brian Haren stated there appears to be some structural issues with a branch on the tree and asked if the arborist noted the flaw.

Rick McAllister replied after the initial inspection, the arborist had some planned pruning; however, the arborist has not seen the branch, but it will be part of the planned tree care.

Chairman Bolton asked what was planned for the amenity area.

Rick McAllister replied a pool and pavilion area.

Larry Blanks said he had also noticed the branch.

Rick McAllister confirmed there was a five (5) year plan with an arborist also checking the tree.

Tom Mahon asked the age of the tree.

Rick McAllister replied approximately 100 to 150 years.

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

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3. **Consideration of Petition No. A-581-11, Jason Payne of Ultimate Fitness, Inc., Owner, and Jason Walls of Integrated Science & Engineering, Inc., Agent, request a 14 foot Variance to reduce the front landscape area from a minimum of 50 feet to a minimum of 36 feet to provide 15 new parking spaces. This property is located in Land Lot 70 of the 5th District, fronts on SR 85 South, and is zoned C-H.**

Jason Walls of Integrated Science & Engineering, stated staff had prepared a thorough analysis. He said the fitness center open in 2008, and has encountered parking issues during peak hours. He pointed out cars are parking along the curb in front of the fitness center and on the adjacent property. He confirmed the owner had tried to secure a parking agreement with the lot to the north and had also tried to purchase the lot to the south, both to no avail. He reported there were three (3) accident reports from the Sheriff's Office in the package; however, there have been numerous accidents, approximately 10 more. He pointed out the constraints of the property included the location of the septic system and stormwater in the rear of the lot.

Chairman Bolton 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.

Tom Mahon made the motion to approve the petition. Bill Beckwith seconded the motion.

Tom Mahon said he had observed the lack of parking during peak hours and he sees the need for the additional parking. He noted the large septic field in the rear of the property; therefore, parking would not be permitted in this area. He reported there should be no loss of landscape.

Jason Walls confirmed the plants located in the area for proposed parking would be added along the corridor and to also provide supplemental plantings to shield headlights.

Tom Mahon asked what type of plants would be utilized.

Jason Walls replied River Birch Tree, Oak Tree, Loropetalum, Dwarf Burberry Holly, Dwarf Yaupon Holly, etc. He added the landscaping materials would be required to comply with the Development Regulations.

Larry Blanks pointed out the adjacent businesses complied with the front yard setbacks and approval of the variance request would set a precedent.

Dennis Dutton advised the cars parked along the curb are not in designated parking spaces and are illegally parked.

Larry Blanks asked the peak hours for the fitness center.

Jason Walls replied from 7:00 am to 10:00 am and 5:00 pm to 7:00 pm. He added classes have been rescheduled.

Larry Blanks asked Jason Payne if he had spoken with the adjacent property owners.

Jason Payne reiterated he had tried to secure a parking agreement with the lot to the north and had also tried to purchase the lot to the south, both to no avail.

Chairman Bolton asked what was located on the property to the south.

Dennis Dutton replied the property was currently vacant and only contains the inter-parcel access; however, a dental office is proposed.

Brian Haren also expressed concern about setting a precedent. He said someone should have performed a better business analysis of the size of the structure and the available parking. He commented once the variance is approved, other property owners will want the same.

Jason Walls asked if they would not have to show a similar or worse hardship, as far as, accident reports and things of that nature.

Brian Haren replied he hoped they would. He added the ZBA had dealt with issues across the street regarding signage.

Bill Beckwith asked which board considered the petition on SR 85 North for outdoor display.

Chairman Bolton replied the ZBA heard the petition.

Bill Beckwith pointed out the outdoor display was approved to encroach into the setback which means a precedent has already been established.

Dennis Dutton confirmed the building on SR 85 North was built in the 1970's prior to the adoption of the Overlay Zone.

Brian Haren asked if the subject property was developed after the adoption of the Overlay Zone.

Dennis Dutton replied the property was developed after the adoption of the Overlay Zone.

Chairman Bolton asked if the building was originally constructed for a fitness center.

Dennis Dutton replied the building was originally constructed for a fitness center.

Hearing no further comments, Chairman Bolton called for the vote. The vote was 2-3 with Chairman Bolton, Brian Haren, and Larry Blanks voting in opposition of the motion. Due to the lack of three (3) affirmative votes, the petition was denied.

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4. Consideration of Petition No. A-582-11, Victor and Marcellustene Clincy, Owners, and Lee Mayweather, Agent, request enlargement of a legal nonconforming structure for a proposed addition to the child care facility. This property is located in Land Lot 168 of the 5th District, fronts on Ellis Road, and is zoned C-H.

Lee Mayweather reported the lot contained a legal nonconforming structure and he was proposing an addition to the front of the building for a vehicle drop-off canopy and foyer. He said the building was constructed in 1983, and met all applicable zoning requirements at that time. He noted the addition would reduce the front yard setback from 70 feet to 55 feet and side yard buffer and setback from a total of 100 feet to 15 feet. He remarked the addition would consist of a stone and stucco drop-off drive under canopy and a brick and stucco foyer.

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Chairman Bolton 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.

Larry Blanks asked if two (2) motions would be required for each variance.

Pete Frisina explained the petition was for the enlargement of a nonconforming structure which is already in the setback which will in turn, reduce the setbacks. He added the structure was made legally nonconforming because the ordinance was amended.

Brian Haren made the motion to approve the petition. Larry Blanks seconded the motion.

Tom Mahon stated he had no problems with the request.

Chairman Bolton concurred.

Larry Blanks advised approval of the proposed addition would not eliminate the compliance with all of the other regulations.

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

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5. **Consideration of Petition No. A-583-11, Flat Rock AME Church, Owner, Rev. Arthurine N. Bishop, Assistant Pastor, and Bobby Bullard of Bullard Land Planning, Inc., Agent, request: 1) Enlargement of a legal nonconforming structure to allow an addition to the church; 2) A 14 foot Variance to reduce the west side yard buffer from a minimum of 50 feet to a minimum of 36 feet to allow designated parking; 3) A 17 foot Variance to reduce the rear yard buffer from a minimum of 50 feet to a minimum of 33 feet to allow designated parking; and 4) An 11 foot Variance to reduce the setback for the enhanced swale/detention facility from a minimum of 25 feet to a minimum of 14 feet. This property is located in Land Lot 26 of the 7th District, fronts on Old Chapel Lane, and is zoned R-40.**

Bobby Bullard stated many of the members of the church were present tonight and it had been a pleasure to work with them. He remarked he did work all over metro Atlanta and he had not worked with a more thorough group of people than the staff at Fayette County. He reported the congregation had been here for 156 years and added this is the oldest African American church in Fayette County. He noted the ZBA had approved several previous petitions for the church. He presented a power point presentation and pointed out the location of the existing church; however, there is presently no fellowship hall for the church congregation. He confirmed the site had been engineered and now the church knows what can actually be built. He remarked there is currently no designated parking. He advised approval is pending from the Board of Health to allow an off-site septic system. He pointed out the long, skinny nature of the property which contains a cemetery on the east side of the church. He noted the front yard setback is 100 feet and the rear yard buffer is 50 feet plus a 75 foot setback; therefore, it is impossible to meet these setbacks. He confirmed the proposed addition would not encroach further into the setback than the existing church building.

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

Ronald Bishop of 165 Magmar Lane stated he was a member of Flat Rock AME Church, on the Trustee Board, and on the Building Committee. He stated he was in favor of the approval of the

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petition. He said the church greatly needed a fellowship hall. He noted Old Chapel Lane was actually developed through the church's property; however, there is discussion among the BOC that the road may be relocated which will enhance the church's property. He requested approval of the petition by the ZBA.

Lemonica Watson of 244 Otter Circle remarked the church was a safe haven for her and her children.

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

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

Chairman Bolton confirmed multiple motions would be required.

Robyn Wilson replied he was correct.

1) Enlargement of a Legal Nonconforming Structure

Larry Blanks made the motion to approve the enlargement of a legal nonconforming structure. Tom Mahon seconded the motion.

Larry Blanks advised approval of the proposed addition would not eliminate the compliance with all of the other regulations.

Tom Mahon asked the purpose of the holes in the ground and also about the existing slab with a plastic pipe coming out of the ground.

Bobby Bullard replied the slab was where the old school house was located, the plastic pipe was an old taped off water pipe, and the holes were for the testing of the soils for possible on-site septic.

Chairman Bolton said an African American church which had been in existence for 156 years was a treasure for the County. He added the request complies with the six (6) points of criteria.

Larry Blanks expressed concern about the disturbance of any graves during the construction process.

Bobby Bullard replied the church had hired a company with ground penetrating radar to site the graves; however, when the road is relocated and the right-of-way is dedicated, Fayette County does not want that part of the dedication.

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

2) 14 foot Variance to reduce the west side yard setback buffer from a minimum of 50 feet to a minimum of 35 feet

Bill Beckwith made the motion to approve the first Variance. Brian Haren seconded the motion.

Tom Mahon stated there was very thick screening between the church and the adjacent property and asked the plans for the vegetation.

Bobby Bullard replied a landscape plan had been submitted for review which would be required to comply with the landscaping requirements listed in the Development Regulations; however, any disturbed areas are required to be replanted to bring the landscaping into compliance. He said he was proposing a staggered, double row of Eastern Red Cedar and Leyland Cypress.

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

- 3) *17 foot Variance to reduce the rear yard buffer from a minimum of 50 feet to a minimum of 33 feet to allow required parking*

Larry Blanks made the motion to approve the second Variance. Brian Haren seconded the motion.

Chairman Bolton clarified the existing church is located in the buffer.

Dennis Dutton replied he was correct.

Tom Mahon clarified the variance was for the parking area; however, there would be no parking behind the church.

Bobby Bullard replied he was correct.

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

- 4) *11 foot Variance to reduce the setback from 25 feet to 14 feet to allow placement of the enhanced swale/detention facility within the buffer along the rear property line*

Brian Haren made the motion to approve the third Variance. Bill Beckwith seconded the motion.

Larry Blanks asked for clarification of the variance.

Dennis Dutton advised stormwater retention and detention facilities may be located in a buffer; however, there shall be a set back of a minimum of 25 feet as measured from the property line.

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

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Chairman Bolton asked if there was any further business.

Dennis Dutton advised the May Public Hearing had been rescheduled to Wednesday, May 25, 2011, for a possible Administrative Appeal.

Ton Mahon asked Robyn Wilson to send the ZBA members an email with the full address of each ZBA petition so they can key the information into their GPS system.

Robyn Wilson replied she would provide this information to the ZBA.

There being no further business, Larry Blanks made the motion to adjourn the meeting. Tom Mahon seconded the motion. The motion unanimously passed 5-0. The meeting adjourned at 8:23 P.M.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

**VIC BOLTON
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**