

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on October 24, 2011, at 7:11 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: Dennis S. Dutton, Zoning Administrator
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator
Deputy Hank Meyers

STAFF ABSENT: Pete Frisina, Director of Community Development

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 Public Hearing held on September 19, 2011.

Bill Beckwith made the motion to approve the Minutes as circulated. Larry Blanks seconded the motion. The motion unanimously passed 5-0. Members voting in favor were: Chairman Bolton, Bill Beckwith, Larry Blanks, Brian Haren, and Tom Mahon.

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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-588-11, Wild Turkey, LLC, Owner, and Gene Barber of New Hope Baptist Church and Billy Brundage of Brundage Engineering, Inc., Agents, request an Appeal from the actions of the Zoning Administrator regarding additional access for the church through a minor thoroughfare in the proposed subdivision for Southmill. The proposed subdivision for Southmill consists of 43.38 acres with 18 single-family dwelling lots. This property is located in Land Lots 8 and 16 of the 6th District, fronts on SR 85 South, and is zoned C-S.

Randy Boyd, registered land surveyor and registered engineer, stated he was representing Wild Turkey, LLC, developer of the Southmill Subdivision. He said he would like to take a street in Southmill up to the property line of the New Hope Baptist Church South Campus to allow access property along the property line of Southmill to SR 85 South. He commented the appeal was based on the interpretation made by the Zoning Administrator. He read Conditional Use requirement found under Article VII.,B.,13.,b. as follows: Such uses shall be permitted only on a lot which fronts on and accesses a Major Thoroughfare as specified by the Fayette County Thoroughfare Plan. He said the Zoning Administrator has interpreted this requirement to mean that access is only allowed from a Major Thoroughfare. He presented handouts to the ZBA. Said handouts are attached hereto and made a part hereof. He pointed out the requirement does not mention local streets, only major thoroughfares. He commented he had reviewed the history and where Kenwood Christian Church, now known as Christ Church of Whitewater was allowed access from Christopher Drive, a local

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street. He remarked the situation was very similar.

Randy Boyd referenced the handout as follows:

- Page 1 Indicates the church on the south side of Christopher Drive, Whitewater Middle School on the north side of Christopher Drive, and a subdivision to the rear of the church.
- Page 2 Indicates the church, zoned A-R, Whitewater Middle School, zoned A-R, and a subdivision, zoned R-40.
- Page 3 A recorded Warranty Deed for the dedication of right-of-way for Christopher Drive.
- Page 4 A recorded Warranty Deed for the dedication of right-of-way for the streets in the subdivision.
- Page 5 A copy of the recorded plat of the subdivision for Phase I, recorded in 1992.
- Page 6 A copy of the recorded plat of the subdivision for Phase II, recorded in 1993.
- Exhibit A Copy of the site plan approved by a previous Zoning Administrator dated November 30, 1993, 18 years ago, for Kenwood Christian Church. The only entrance, highlighted in yellow, is from Christopher Drive. There is no entrance from SR 85 South.
- Exhibit B A copy of the site plan approved by a previous Zoning Administrator dated June 12, 1995, 16 years ago, for Kenwood Christian Church. A second entrance, highlighted in pink, is from Christopher Drive and an entrance from SR 85 South, highlighted in pink.
- Page 7 A copy of the site plan checklist requesting resubmittal of the site plan signed by a previous Zoning Administrator, dated October 4, 1993.
- Page 8 A copy of the site plan checklist approved by a previous Zoning Administrator, dated November 2, 1993.
- Page 9 A copy of a Certificate of Zoning Compliance for Kenwood Christian Church approved by a previous Zoning Administrator, dated December 1, 1993, as required under Article II., Sec.8-26. The Certificate of Zoning Compliance states: Curb cut on Christopher Drive only at this time. The property was given an address of: 146 Christopher Drive.

Randy Boyd stated the precedent has been set because Kenwood Christian Church was developed under the same Conditional Use requirement which was adopted in 1989. He pointed out the requirement is silent about access to a local street. He referenced the Staff Analysis which states: The Conditional Use Requirements do not address access from a Minor Thoroughfare. He said the standard was set in 1993, 18 years ago, with the approval of two (2) entrances from Christopher Drive. He asked the ZBA to override the interpretation of the current Zoning Administrator because, by his own admission, the ordinance does not state a church cannot have access from a local street.

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

Gene Barber of New Hope Baptist Church commented there are three (3) accesses from SR 74 South which complies with the ordinance, but the ordinance does not address a secondary access from another street which is what the church is asking for.

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Billy Brundage of Brundage Engineering, Inc. read the Conditional Use requirements as follows: Such uses shall be permitted only on a lot which fronts on and accesses a Major Thoroughfare as specified by the Fayette County Thoroughfare Plan. He said this particular section is addressing where the conditional use is allowed, only on a parcel with access on a major thoroughfare, which New Hope Baptist Church South Campus complies with. He stated it does not address where access is denied from. He commented the requirement does not address this issue.

With no one else present in the audience, there was no one to speak in opposition and rebuttal was not required; therefore, Chairman Bolton closed the floor from public comments.

Larry Blanks asked if there were any amendments made to the ordinance since 1993, and what did the ordinance require before that might have given the previous Zoning Administrator the authority to make the determination, as opposed to the language now.

Dennis Dutton replied only a slight modification was made.

Tom Mahon asked if the Thoroughfare Plan existed in 1993.

Dennis Dutton replied the plan existed at that time.

Tom Mahon said he was not familiar with Christopher Drive.

Randy Boyd explained if you go south on SR 85 past the Whitewater Middle School that Christopher Drive will be on the right and the school is on the right side of Christopher Drive and the church and subdivision will be on the left side of Christopher Drive.

Tom Mahon asked if Christopher Drive is a private street.

Randy Boyd replied page 3 of the handout is the recorded Warranty Deed for the right-of-way for Christopher Drive. He added it is a county maintained and county accepted street and a local street.

Tom Mahon asked if the street would go through the subdivision.

Randy Boyd replied the county maintained street would go along the property line of Southmill.

Brian Haren verified the street would be developed regardless of the outcome of the public hearing tonight.

Randy Boyd replied the subdivision would be developed regardless.

Chairman Bolton recognized Billy Brundage.

Billy Brundage stated the plat in the Staff Analysis is a copy of the preliminary plat recently approved for Southmill. He pointed out the red lines are the proposed change which would require approval of a revised preliminary plat should the appeal be granted tonight.

Larry Blanks verified the street would abut two (2) of the lots in the subdivision.

Tom Mahon asked if the plat indicating the street abutting the church's property was what the Zoning Administrator reviewed when he made his decision.

Dennis Dutton replied that is correct. He added the subdivision street would be a local street into the church property.

Larry Blanks asked if Christopher Drive is a county local or internal local.

Randy Boyd replied Christopher Drive is classified as a local internal street, the same as the street in Southmill.

Bill Beckwith asked what if the access to the church was a driveway in a private road.

Randy Boyd replied the purpose for the access is the costs (\$200,000) of a deceleration/acceleration lane and the costs would be shared between Southmill and the church for the entrance only. He pointed out since the median was developed on SR 74 South and with two (2) right turn-in/right turn-out and one (1) crossover, it causes pandemonium when church lets out and people are trying to go northwest on SR 74. He added there is the old Starrs Mill Baptist Church, utilized by New Hope Baptist Church, at the other corner of SR 85 and SR 74, which requires a u-turn and the access through Southmill would allow a left or right turn on SR 85.

Chairman Bolton asked if the old Starrs Mill Baptist Church has access onto SR 85 South.

Randy Boyd replied "No sir."

Gene Barber confirmed there was no access onto SR 85 South from the old Starrs Mill Baptist Church.

Bill Beckwith asked if the turning lane past the bridge at Whitewater Creek goes into the old Starrs Mill Baptist Church.

Randy Boyd referenced the last page of the Staff Analysis which indicates the accesses to New Hope Baptist Church South Campus and the old Starrs Mill Baptist Church.

Larry Blanks asked how many entrances would there be for Southmill.

Randy Boyd replied one (1) entrance.

Larry Blanks said if the appeal was granted the owners within the subdivision would be impacted by the traffic from the church.

Randy Boyd replied it was a similar situation on Christopher Drive except it is being utilized by a church, school, and subdivision. He said the street would be developed first and the church would be using it so when the lots are sold, the people would be aware the church was using the street. He stated on Christopher Drive, the school was developed first, then the subdivision, followed by the church. He added the church on Christopher Drive was after the fact.

Larry Blanks asked if the street in Southmill is considered to be an internal street.

Chairman Bolton replied the street would have to be classified as a major thoroughfare like SR 74 and SR 85.

Dennis Dutton said a change to the street classification would require approval by the Public Works Director and BOC.

Chairman Bolton remarked each case is considered on its own merits, precedent and similar situations are important. He said with staff changes and amendments to the ordinance something which happened 18 years ago does not necessarily bind the ZBA to decide a certain way because the ZBA does not know if a previous Zoning Administrator made a right or "less than right" decision. He stated precedent is important; however, the fact of one (1) being similar does not necessary mean

it is applicable in this case or that it bound the ZBA. He remarked he understood the intent of the ordinance and what was trying to be accomplished whether or not we like the way it was worded. He said it could really be interesting in a subdivision at the peak moments when a church is loading or unloading and this seems to be the spirit of the ordinance, not to drive hundreds of cars through a subdivision because the owners may not be able to get in and out of their street. He commented his church had to build a large parking lot because the traffic flow was putting stress on the neighborhoods. He stated he understood the spirit the county was after which is keeping the traffic on the heavy road as opposed to bringing it through a neighborhood. He pointed out people who are late may speed through the subdivision. He noted traffic does not pass through the subdivision on Christopher Drive to get to the highway like it would in Southmill.

Bill Beckwith asked if it would be acceptable if the street were to be considered a private road.

Dennis Dutton replied the church is zoned A-R and the subdivision is zoned C-S. He said the church would be required to have 125 feet of road frontage onto SR 85 South.

Randy Boyd replied the 125 foot of road frontage would be required to be rezoned to A-R. He said the subdivision street would not be allowed from a private drive. He pointed out the separation between entrances would then be required. He stated a subdivision from the other side of the property is not very safe. He reported if the church was zoned C-H, the conditional uses would not apply and as a permitted use, the C-H would automatically allow what is being proposed.

Bill Beckwith asked if the church was considering rezoning the property.

Randy Boyd replied "No sir." He added the beauty of this situation is the street would be developed and would serve the church so the property owners would know about the access. He said this is not being done after the fact. He remarked all the possibilities have been discussed with staff to try to find solutions. He said it was hard to reconstruct the timeline 18 years ago but it appears a mistake was not made because the previous Zoning Administrator interpreted the ordinance differently. He reiterated access to a local street was not addressed in the ordinance, it is silent. He stated if it was not proper now, it was not allowed then and the church on Christopher Drive has been in violation for 18 years. He said he had donated a lot of his time, many, many hours, at no cost to the county, in developing the ordinance and gave his expertise to the BOC since he has been in business for 30 years. He stated he would be more than happy to ask the BOC what their pleasure is and ask if this means access to a local street is not allowed and if so, amend the ordinance. He stressed the precedent has been set and if it is wrong then, it is wrong now, and if it was right then, it is right now. He thanked the ZBA for their time.

Chairman Bolton stated the ordinance states "accesses and fronts on a major thoroughfare" which, to him, meant the property abuts a major thoroughfare and that is where the access should be as well. He concurred the ordinance does not specifically address the issue.

Tom Mahon asked Bill Beckwith if he was on the Planning Commission when this took place.

Bill Beckwith replied he was not.

Tom Mahon said he did not even know Christopher Drive existed.

Larry Blanks remarked he lived near there and has always seen the traffic back up. He said it was probably approved incorrectly and now since we have seen the results, do we really want to do the same thing over again.

Tom Mahon commented he stood with the Zoning Administrator. He said the ordinance language needs to be clarified by the BOC. He remarked the ZBA should not be changing it and he had a

problem with that. He stated he knows the ordinance does not say it denies access from a local street but that would open a flood gate in the future and better clarification needs to be made which does not come from the ZBA but the BOC.

Chairman Bolton and Larry Blanks concurred.

Chairman Bolton said he thought this was the spirit of what was written whether it was worded the best possible way and it says accesses which means this is the way we want traffic to come and go is the major thoroughfare.

Tom Mahon added a subdivision is a closed mini community and especially since the church traffic would make it a thoroughfare.

Bill Beckwith said the applicant makes a very strong argument whether or not a previous Zoning Administrator utilized all the resources in making the decision and based on the decision, there is a precedent, whether the ZBA agrees with it or not, it is a matter of interpretation. He said he tends to agree with the applicant.

Chairman Bolton remarked he could see the applicant's case and understands it perfectly well. He added he thought the intent was to control the access from flowing through where people's homes were going to be because of the level of traffic at peaks times.

Larry Blanks concurred; however, he did not think the decision made in 1993, was the proper decision. He said Dennis Dutton had made the proper decision and if this was allowed, they would have the same problem that they have on Christopher Drive. He said they have to get a law enforcement officer to stop traffic on SR 85 South to alleviate the traffic coming off of Christopher Drive.

Bill Beckwith noted this happens at a number of churches on Sunday. He said he had seen two (2) law enforcement officers on SR 74 North, north of Peachtree City. He stated there is a bubble of activity for one-half hour on Sunday and the rest of the time, traffic flows fairly freely.

Larry Blanks pointed out the street is the only entrance for the people in Southmill who live there to get to and from their homes.

Bill Beckwith said if the street was to be developed in Southmill, it would be there first and potential buyers should recognize that which is a different situation from the Christopher Drive situation.

Brian Haren stated the church finds itself in the position it is in because the State came through and basically blocked access to their property on the other side of SR 74 South. He said this has imposed a traffic pattern on them is a dangerous situation and probably requires traffic control every Sunday. He said it is not a perfect situation and he sees the points on each side; however, this is taking place because of the construction to SR 74 South with a median. He remarked the church is in a bad situation from a traffic standpoint.

Chairman Bolton called for a motion.

Larry Blanks made the motion to deny the appeal and uphold the Zoning Administrator's action. Tom Mahon seconded the motion. The motion to deny the appeal and uphold the Zoning Administrator's action was passed 3-2. Members voting in favor to deny the appeal and uphold the Zoning Administrator's action were: Chairman Bolton, Larry Blanks, and Tom Mahon. Members voting in opposition to the motion to deny the appeal and uphold the Zoning Administrator's action were: Bill Beckwith and Brian Haren.

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Chairman Bolton asked if there was any further business.

Dennis Dutton advised no applications had been submitted for the November Public Hearing; therefore, it would be cancelled.

There being no further business, Larry Blanks made the motion to adjourn the meeting. The motion unanimously passed 5-0. Members voting in favor were: Chairman Bolton, Bill Beckwith, Larry Blanks, Brian Haren, and Tom Mahon. The meeting adjourned at 8:03 P.M.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

VIC BOLTON
CHAIRMAN

ROBYN S. WILSON
SECRETARY