

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on September 22, 2014, at 7:15 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

**MEMBERS PRESENT:** Vic Bolton, Chairman  
Larry Blanks, Vice-Chairman  
Bill Beckwith  
Tom Mahon  
Tom Waller

**STAFF PRESENT:** Dennis Dutton, Zoning Administrator/ ZBA Secretary

**Welcome and Call to Order:**

Chairman Vic Bolton called the meeting to order and introduced the Board and Staff.

**1. Consideration of the Minutes of the Meeting held on August 25, 2014.**

Larry Blanks made a motion to approve the minutes. Tom Waller seconded the motion. The motion passed 5-0.

**2. Consideration of Petition No. A-615-14, Deanna Gutierrez, Owner and Shane Gutierrez, Agent requests a Variance from Sec. 110-125. A-R: Agricultural-Residential Zoning District, to reduce the front yard setback from 100 feet to 87 feet for a single-family residence to remain.**

Shane Gutierrez said I am not a builder and I am not familiar with the lingo of builders or best practices but everything I have done has been in the most honest and in good faith that I could ever do. He added that he believes in the bottom of his heart everything should be done to the best of his ability at any time. He said every step of this process was permitted from day one including the demolition of the existing house that was also permitted and I had the blessings of the County every step of the way. He said he has been in constant communication with the Permits and Inspections Department during the entire construction process and I have been in good standing with no citations or stop work orders. He wanted to say this is not a random home site location as many factors were involved in placing the home in this location due to constraints of the well, the requirements of the septic system and the topography of the site sloping off to the back. He said Dennis Dutton told me there was a 100 foot setback but he didn't know where to measure from and he thought he was 100 to 120 feet back. He stated he started this process about a year ago in September of 2013 and all of the permits were done, the demolition was completed, the property was surveyed, level 4 soil study was conducted and the septic permit department came out to the property. He said in March of 2014 he made a change order to the foundation due to the elevation once the demolition was completed and with a feel of the crest of the property and there was quite a bit of a drop between just the middle

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to the back of the house, so we were able to grade enough down to get the entire foundation back on a slab based on a recommendation from one of the building inspectors as he said the mono slab was the preferred foundation because it was more stable which pushed it back a couple of feet. He said once the footers were dug the slab plumbing was done, it was inspected and he was told by the inspector that he was golden on that. He added that in his mind as he wasn't a builder every step of the process confirmed that he was going in the right path. He stated that after the concrete was poured the foundation survey was ordered and he brought it to the Environmental Management Department and had a conversation with her and she said I was good to go and he asked if he needed to take it next door to Planning and Zoning and she said she would do that for me. He said that's important because in the permit material it says the foundation survey must be submitted and approved by the Planning and Zoning and Environmental Management Departments prior to commencement and there is no process and he asked Dennis Dutton about this and there is no process for getting back to you for the approval. He added that the only way they will get back to you and this has been confirmed by every surveyor I have talked to, they only get back to you if there is a problem and since I didn't hear from anyone I thought I was good to go and started the framing process. He said once he got the framing done he spoke to Joe Scarborough about the inspections and called in for an early framing inspection because I wanted to make sure that everything I did was done right, not covered up and then have to redo something that could have been caught beforehand. He added that he is very thorough on trying to get everything done right the first time and he affirmed that I could move on and I called for the inspection and the permit tech told me that at that point I could not get the framing inspection done until the roughs were done and my understanding there is a blinking red light on their computers that tells if anything is not turned in or done out of order. He said when he called in on the permit line the permit tech called to tell me that the framing couldn't be inspected because the roughs and anchor bolts hadn't been inspected. He added that at that time he was not informed of not having a foundation survey at that time. He said the setbacks were not on the foundation survey or plot survey for me to notice and not being a builder I did not know to look for that and they were not there for me to see the house was sitting anywhere other than where it should have been. He said so here is where we are, I was affirmed that I could move on and in my belief I could and I had good reason to believe from experience that the county was stopping by checking on the progress and I would see on a daily basis the county trucks driving by slowing almost to a dead stop in the road seeing what I was doing and I assumed they knew what I was doing and they were checking on the progress of this construction site. He stated the foundation survey was turned in on May 15<sup>th</sup> and on August 15<sup>th</sup> there was an inspection scheduled so he could be there with the inspector and no one showed up so I called the to see what happened and I was told no one came out because I never turned in the foundation survey. He said he came up to the county on Monday morning and verified that the foundation survey was turned in and Pete Frisina went over and got it and that is when he told me about the problem and during that meeting he told me that the county has partial blame in this situation and that is important. He stated that this is where he is now, it is the worst situation in my life as I have done the best I could with no intent to do wrong and the intent of the law has been satisfied but there are many extra ordinary conditions that could have been caught earlier but I would be here anyway to talk about a variance

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that would be due to the topography of the site. He said the spirit of the law is to be further back without practical difficulty or unnecessary hardship, this situation is not all of my own making and there would be no precedence derived from this situation in everything that has come to play in this.

He added the well limits to where the house could be placed and it could not be placed on the northern half of the property because there was not enough room for the septic after the 100 foot buffer and that only left the south part of the property and on the south part of the property the slope falls off to the side and rear and septic had to go in a specific place. He said the house could not go further because the topography fell off right at the back of the house and everything beyond that is fill dirt which would have created a host of new problems to move the house back. He stated the topography tightly constrained with well, septic and the slope are the very extra ordinary conditions that have created this situation and the application of the regulations to try and standardize properties in zoning requirements would create a practical difficulty and unnecessary hardship for us to keep our home. He said the conditions particular and peculiar to this property had been caught early the house would not be 50 to 60 percent complete and we would not be in financial despair at this point having to tear down our house because it would cost more to tear down the house at this point than it would to rehab it and push it back the 12 foot 5 inches it is off set from the setback. He said he has 190 petitions letters supporting the variance from the property owners in the area.

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

Sheila Walker said she and her husband John own the property directly across the street from the subject property and they own approximately 66 acres and have owned it for 40 plus years. She added that they bought the property from the Morris's and the house that they lived in that was torn down by Mr. Gutierrez and the house was not in good condition. She stated that they have noticed Mr. Gutierrez and his father-in-law working on the house and they have always cleaned up all of the debris and anyone who would work so hard would be a good neighbor. She said they would have no objection to the approval of the variance and maybe this will one of those times when common sense and goodwill will prevail.

Chairman Bolton asked if there was anyone who wished to speak in opposition to the petition. Seeing none he said he would let one more person speak as there is about a minute left for those in favor.

William Souder said he would like to say two words about the Gutierrez family, honor and helpful. He said he has known Shane for two or three years, our kids have been in Boy Scouts together and we have remained friends. He added that they are god fearing people and if anyone deserves a pardon it is these people and he believed there is no situation that is more dire so they should be granted the variance.

Chairman Bolton said as there was no one else to speak the public hearing is closed.

Larry Blanks said one of the letters in the package is from the surveyor Al Gaskins and it states that the home is located in the best possible location due to the topography and other constraints of the property as it is located as far back on the crown of the property it can be placed to put a monolithic slab on and he just want to make sure everybody saw the letter.

Chairman Bolton said one of the things we always come back to on this board is trying to avoid this thing we call self-inflicted hardship, things that result from a bad choice or bad behavior on the part of the petitioner and I think it is clear that Mr. Gutierrez comes from a good place and has done the best that he could with this thing. He added that it is a complicated process and we as representatives of the County must own a component in this as well. He said the County has been dramatically understaffed for years and the process would be perfect if there weren't any humans in it. He added second we are very challenged in regard in the number of resources and as people leave their work just gets added to someone else so please forgive us for any short comings that might be coming from our end of the process but we do have very dedicated hard working staff members that never go home and they do have a lot of processes and paperwork coming at them so I hope you won't take anything negative away from the fact that we probably didn't run the process this time to the best of our ability. He said having turned it in, in good faith and having operated in what you knew the law to be I think says a lot for you in an integrity point of view so I have no issue with the request because given the circumstances you didn't know any better. He stated if I was a hard head I would say ignorance of the law is no excuse but I am not and we are here to do the right thing in the context of our zoning and the most important thing you said tonight was if this hadn't happened you would still be here because of the topography asking us to allow you to do something to fit it in to where it had to go because it most likely would not have worked just based on the shape of things and the slope of things, so we would have probably had this conversation one way or the other as if not this month, last month. He again said he did not have a problem with the request.

Larry Blanks said the county processes when we ran into a similar situation, I made a statement during the meeting that the county needs to go back and look at doing some measurements prior to it falling to a hardship to the builder and obviously nothing was done. H added that he went to Google earth tonight before the meeting and pulled up an aerial photograph of the property while the cement truck is still dumping the cement on the foundation and while the county doesn't inspect that at an earlier time still floors me and that we still allow this to go on. He said he is dinging the county inspection right now and I hope somebody reads this and they need to start measuring earlier in this process and I think we dropped the ball.

Bill Beckwith said things happen and it happened to Mr. Gutierrez and it may have been the county's fault or it may have been his fault but given that he shouldn't be dinged by that and I will make a motion to approve the petition. Larry Blanks seconded the motion.

Tom Mahon asked Mr. Gutierrez if he used a land surveyor.

Shane Gutierrez said yes.

Tom Mahon asked if the land surveyor shot the line where the house should be located.

Shane Gutierrez said no he didn't.

Tom Mahon said had he done that we would not be here tonight. He added that the problem he has is and he has been on this board for 32 years and we have had homes that we made come into compliance and what is to prevent someone from saying I didn't do this, I didn't do that and everybody ends up doing it so you see the predicament we are in cause we set a precedence because we had one house that was a \$700,000 house and they had to come into compliance. He added that it looks like a beautiful house and he really feels for him but if it is monolithic I had a house set on a crawl space and there are houses that have crawl spaces but the board knows I have a problem with this. Tom Mahon said if he comes back to do this with topography that would be the proper way. He added that he has issues when people say I didn't do this, I didn't do that and then they expect us and how do we defend it in court.

Chairman Bolton said here's where this case parts company with the previous case and in that instance he had a contractor who had been building in the county for a dozen years who said he understood the requirement and just didn't comply with it and he found some rock on the property and moved the house a little bit and kept on moving rather than turn in the foundation survey that was required at that step of the process and then said I have been building for that long and have never been dinged and one of these gentlemen said well in that case you knew about the requirement and he said it was an oversight. He added that is a real different deal than when somebody with a shirt that says Fayette County anything says to the client you may proceed, so that is where these part company. He stated when we are talking about someone who knew the process and stepped around it anyway versus someone following what they thought to be the process and having one of our staff members say yes you are good whether the document was send down the hallway in a timely manner or to the right department that's where this case breaks company with the previous case because in this case the home owner submitted what he was supposed to submit to the people was supposed to submit it to so that is why I am OK with what we're doing because I believe we gave him a go ahead to proceed that was at a stage where we might have said let me let some folks look at this and I will get back to you. He said I don't want to renege on that word from one of our staff members at the expense of the homeowner and that is why I am in the position I am tonight.

Tom Mahon asked Dennis Dutton if he agrees with what Mr. Gutierrez said tonight about the process.

Dennis Dutton said he agreed with what Mr. Gutierrez had said tonight.

Tom Mahon said for the record, who is responsible for siting the house on the property the county or the homeowner

Dennis Dutton said it is the homeowner's responsibility.

Tom Mahon said when you inform the homeowner what the conditions are and it has to be 100 feet did you state where it was from the starting point.

Dennis Dutton said to the best of his knowledge yes. He added in other words from the right-of-way.

Tom Mahon asked do we give requirements or some type of guidelines to a homeowner when he comes in to file for a permit.

Dennis Dutton said there are two ways that they look at it, if it is a new house generally there has to be a plat which there was a plat on this property. He added that the survey is generally not the plat, sometimes it is and sometimes it's not, so when it is submitted they just mark where they are building their home there is no engineering required at the beginning in other words they just draw the lines saying it so far away, so at the front end which I think is another issue we don't even ask for foundation survey before they pour the concrete we wait until after they pour the concrete.

Tom Mahon asked do we give the homeowners a guideline as to the 100 feet as in this case do they have a hand book or some type of guideline so they know where the starting point is located.

Dennis Dutton said it should be on the plat.

Tom Mahon asked who marks it on the plat the homeowner.

Dennis Dutton said the homeowner.

Tom Mahon said we don't indicate on the plat where the right-of-way is located or do we even indicate where it is located.

Dennis Dutton said no.

Tom Mahon said that is something we need to fix.

Larry Blanks said we had adequate time to stop this process and he had to get it inspected before he could start the framing so when the foundation inspector went out there he should have caught it.

Tom Mahon said I think we need to sit down and go over some things later on.

Chairman Bolton said there are holes in the system but we have one person doing the same job five or six people used to do. He said we have a citizen who was given a permit to build a house, brought in the survey that was required and was told that he was in a good place and can go forward so there is really nothing to stand on as to what should have happened because we did give him a verbal go ahead. He added we need to tighten up the system so when a document comes in we send it to the right departments and we don't give the person an answer until everyone has seen it.

Tom Mahon asked Brian Haren as he is on the Planning Commission what the proper way to get to get our concerns that new have guidelines or a handbook to prevent this in the future. He said we need to make a recommendation after the vote.

Chairman Bolton called the question. The motion passed 5-0.

Tom Mahon said he recommended that staff give the homeowner a handbook, have them sign for the handbook so people are aware of what they have to do that the starting point is the right-of-way. He added that he can see the misinterpretation but we need to make it user friendly not that we haven't tried but there is room for improvement.

Chairman Bolton said this process is built for builders and they are professionals in the craft of building stuff and they know nuances that you have mentioned and when a person serves as his own contractor I think sometimes one might assume there are things they know that they might not and it may be appropriate to give them a sheet with all the specifics.

Bill Beckwith said I think staff got the point tonight.

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There being no further business, Larry Blanks made the motion to adjourn the meeting and the meeting adjourned at 8:00 pm.

**ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY**

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**VIC BOLTON, CHAIRMAN**

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**ATTEST**