

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on August 25, 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  
Pete Frisina, Director of Community Services  
Dennis Davenport, County Attorney

**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 June 23, 2014.**

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

**2. Consideration of the Minutes of the Meeting held on July 28, 2014.**

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

**3. Consideration of Petition No. A-613-14, Camp Southern Ground, Inc. and Spotty Merle, LLC, Owners, requests a Variance to Sec. 110-67. Street frontage for access. (a) (2). from the requirement of creating a property owners' association for the ownership of a private street which the owner of any lot within the subdivision is required to join. This property consists of 5.00 acres, is zoned PUD-PRL and fronts on Ebenezer Church Road.**

Brad Parrott said Camp Southern Ground was formed in 2010 and the property was rezoned to a PUD in 2011. He added the property consists of approximately 400 acres located on Ebenezer Church Road. He stated the property was donated by Zac and Shelly Brown to the camp which is a nonprofit organization. He stated a capital campaign has been on-going and about 25 million dollars has been raised. He said Zac Brown was a camp counselor and this camp is his life's work. He stated the water line is almost completed, utilities are being installed and the septic system is underway. He added they hope to break ground this year on an aquatic center and splash pad and the goal is to have a day camp operating by summer of 2015 and a sleep over camp as soon as possible. He said that the camp will serve kids with special needs. He stated the entrance road

that provides access to the camp and two (2) residential lots is proposed to be owned by the Camp which is a nonprofit and the two (2) residential lots are owned by a for-profit LLC and the issue is the requirement to create of a property owner's association for the ownership of the entrance road. He added the camp has worked with a tax attorney who has stated that since the two (2) residential lots are owned by a LLC that Zac Brown is the chairman of, that anything that is done in terms of the creation of a property owner's association is considered an insider transaction and are excluded by the government regulations for a nonprofit. He stated the tax attorney advised that property not be deeded to a venture that will have a for-profit partner that is also owned by Zac Brown and that is the primary reason for the variance request. He said the presumption is a variance should not be granted unless it is a special case with special circumstances and what we ask this body to consider is you have those special circumstances here and will probably never encounter this type situation again. He added that we have several exceptional conditions here, one being the county will not except the road for ownership because the road spans the dam and the county will not accept the ownership of a road over a dam, the second condition is the camp will own 97.5 percent of the land, and lot 1 has access to Ebenezer Church Road and only lot two really needs to access the new road. He said this creates a hardship on the camp because it could cause us to lose the nonprofit status and he couldn't tell you another example of a subdivision that is like this. He added that there is no public harm and the solution is better than the POA as the two (2) lots will have an easement for access in perpetuity and the camp will also stipulate that the camp will be responsible for the maintenance of the road in perpetuity. He stated this is not your usual variance application but when you look at the facts and apply the variance standards this is precisely the sort of thing where there is no public harm that this body can use their authority to grant the variance, allow the camp to precede and the easement is a better solution than the POA.

Chairman Bolton asked if there was anyone who wanted to speak in support of the petition. See none he asked if there was anyone who wanted to speak in opposition of the petition. See none he said the public hearing was closed.

Tom Mahon said he had been on this board for over 32 years and this was the first case he has seen like this and since it would be a precedence setting situation he has a problem with the request. Tom Mahon said I make a motion to deny the petition.

Chairman Bolton said we have a motion to deny the petition do we have a second.

Tom Waller said he has a comment and he has been a counselor at Rock Eagle for 12, 13 and 14 year old boys and it is challenging. He said anybody that works with youth especially the youth you will be serving has my admiration. He said he not sure of the basis of denying the request but he thinks you are making a major move forward.

Chairman Bolton said the motion dies because there was not a second.

Tom Mahon said he appreciates what the camp has done and the previous variance requests were approved but he doesn't think this is the way to solve the problem; he thinks the ordinance needs to be amended. He added this situation may never come up again but we are dealing with tax ramifications and things we have never dealt with before and this goes beyond the scope of what we are doing. He said he applauds what the camp is going to achieve but he doesn't think this is the board that should do it and he is also concerned with the comment submitted from the applicant that it is unlikely that lot 2 will ever have a home on it and the most likely scenario is that lots 1 and 2 will be owned by Camp Southern Ground. He added that he sees all kind of problems and he doesn't think this board is qualified to make these decisions and he doesn't think this is the place for it. He stated he is not making a motion to deny the request because he has a problem with Camp Southern Ground he thinks the proper solution is to amend the ordinance.

Chairman Bolton asked Dennis Davenport if it would be appropriate to get a legal perspective.

Dennis Davenport said there are several things that make this a unique situation as Mr. Parrott referred to as over 97 percent of the land is owned by the camp which is different than most subdivisions and it is a nonprofit entity where you would generally have 100 residential lots with 100 different owners and you need an association to make sure things are maintained and that is not the case here. He added the reason for the association will be met here with the easement and maintenance of the road in perpetuity. He said he has never seen a case like this for a variance and will it set precedence, it will to some degree but the chance that you will ever see a three (3) lot subdivision where one (1) lot will own the majority of the land you have narrowed the box as close as you can to make it work.

Chairman Bolton said some of the encumbrances of who owns what and would it be an undue hardship due to the fact that the chairman and owner is the same individual and could it not be resolved through the change of one or the other of those things in terms of Mr. Brown serving as the chair of the nonprofit and having an interest in the property next door and could it not be resolved in him changing one of those things by either selling or changing roles.

Dennis Davenport said with a change in property ownership the equation would change but it is hard to determine to what degree.

Larry Blanks said when he first reviewed this request he was not in favor of it but after hearing the presentation he is more in favor of the request. He added the part that he keeps thinking about is the two (2) lots currently owned by a LLC that is owned by Mr. Brown and they may go back to Camp Southern Ground anyway which would resolve the issue or if those lots were sold to another individual that is a solution but after hearing Mr. Davenport and the percentage owned by the camp, I am leaning toward approval.

Bill Beckwith said we have never considered financial responsibility or information as part of our decision making process whatever the tax implications that is not our purview. He said our purview is to determine if this is the proper thing to do in this case. Bill Beckwith made a motion to approve the petition.

Tom Waller seconded the motion.

Dennis Davenport said Mr. Parrott discussed a couple of issues in his presentation and we need to get in the record, that is the camp is willing to maintain the road in perpetuity and to provide an irrevocable ingress and egress easement to lots 1 and 2, up and down the road of that property and since this is motion time it is a good time to address it.

Bill Beckwith said we would amend his motion with those two (2) conditions

Tom Waller seconded the motion with the two (2) conditions.

Larry Blanks said all of these variances that will be given to the property will be transferable to any new owner correct.

Bill Beckwith said it goes with the land.

Chairman Bolton said it's the spirit of the law and whether someone has created the problem themselves and the spirit of what the property owner's association is designed to accomplish is to protect the interests of those that are involved and the primary interest is to be able to get to and from your property and have that road maintained. He said unless I have missed something my sense is we have accomplished what the requirement achieves and I don't have a problem with it given the uniqueness of the situation and the spirit of the ordinance is being met.

Tom Mahon asked, what is the intent of the statement in the application that it is unlikely that lot 2 will ever have a home on it and, in a few years, lots 1 and 2 will be owned by Camp Southern Ground. He said he is at a loss with where you are heading with this if you are never going to have a house on it and it going to owned by Camp Southern Ground why don't you just go ahead and do that and what is the purpose the LLC with the two (2) lots.

Brad Parrott said it is to service debt because the two (2) lots have debt on them with the LLC and encumbered by a security deed that is being serviced by the LLC and until that is paid off it can't be contributed to the camp.

Tom Mahon said so you think the two (2) lots will go to Camp Southern Ground.

**ZBA Meeting**  
**August 25, 2014**  
**Page 5**

Brad Parrott said he couldn't make any promises but that would be the most likely scenario. He said presently the existing house on lot 1 is being used as a residence by the executive director of the camp.

Tom Mahon said this is what I am talking about there is a self-induced hardship and we are considering something basically for tax purposes and in 32 years I have never seen anything like this and I have a problem with it.

Chairman Bolton asked what you define as a self-induced hardship.

Tom Mahon said in 32 years I have never seen a request like this and I have a problem with it and it is basically being done due to the nonprofit tax requirements and the fact that Mr. Brown owns the two (2) lots. He added because of the possible tax challenges, they are coming to us to solve this situation and I don't think the Zoning Board of Appeals has anything to do with that and my contention is for these folks to go to the Commissioners and have an exception in the ordinance. He said you are setting precedence here folks because of what they just said with the nonprofit and the owner of the other property there is some challenges here.

Larry Blanks said what he thought about was the comment that Mr. Davenport made if we get another 400 acres that is 97 percent owned by one (1) group that asks for the road to be maintained, OK we will probably approve it.

Tom Mahon said you would because you have set the precedence.

Larry Blanks said yes and why not.

Tom Mahon asked Mr. Davenport that the ordinance doesn't give any percentages now is that correct.

Dennis Davenport said that is correct.

Tom Mahon you have just set the precedence with 97 percent ownership. He added he is not arguing against what the intent is but I am arguing that we are setting precedence on ordinance and that is not what this board does.

Brad Parrott said he would offer the comment that it is not only the nonprofit but the two (2) lots could be sold off to benefit the camp or sold off to benefit Mr. Brown and the fact that we may donate these two (2) lots doesn't change the fact of the hardship. He added the hardship would exist if there were two (2) independent owners and he thinks this is what this body is charged with looking at and the hardship exists because the County won't accept the road because it goes over a dam. He

said 25 or 30 years ago the County would accept a road over a dam because that's what the County did back then and we would not have any of these issues so part of the hardship is created by the location of the road and now it is our responsibility to maintain and now to layer in on top the cost and hardship of a POA regardless of what happens with those two (2) lots does fit us within the variance structure albeit a unique one and it doesn't surprise me you haven't seen it in 32 years. He added that he doubts you will ever see a 400 acre nonprofit camp again.

Chairman Bolton asked Dennis Davenport if there is something in the tax code that doesn't allow joint ownership of something by a nonprofit entity and a for-profit entity.

Dennis Davenport said he, as Mr. Parrot had done, will defer to the tax attorney that said that will be a problem and he has no reason to doubt that it will be a problem

Brad Parrott said the nonprofit as a general rule cannot operate in any manner that will result in the benefit of a private citizen or a for-profit entity regardless of ownership status. He said so here we are being asked to deed real land to a POA that will be owned by a for-profit entity. He added that you layer in the fact that the for-profit entity is owned by Zac Brown is certainly a further complication. He stated but we would have to explain to the IRS that we have bought the land and built the road and now we have to give it away to a for-profit entity. He said our tax advisor has told us it is illegal under the IRS regulations governing nonprofits.

Chairman Bolton said he has worked as a consultant to large churches and there are challenges when they try to do business ventures because of the nonprofit status.

Tom Mahon said if they went before the BOC and the BOC said over 95 percent ownership a POA will not be required then you don't have these tax issues.

Larry Blanks said I don't think we are involved in the tax issue it is their tax attorney that has advised them that it creates a problem with the nonprofit.

Tom Mahon said this is in the minutes and someone can come back and review these minutes and we have never had a reverse isn't that correct Mr. Davenport.

Dennis Davenport said that is correct.

Tom Mahon said that is what I am trying to get across to you and the proper way is to go to the BOC.

Chairman Bolton said I am satisfied that we will not disadvantage these property owners if we approve this variance in terms of what they really need from a POA and I think it is a unique enough case that it is not anything we have seen before and will not likely see it again. He said precedence

only matters if another case comes before you. He added that it is a complicated matter and he doesn't think granting the variance is going to unduly burden the County or anybody else.

Chairman Bolton called the question and said all of those who are in favor of the variance with two (2) conditions that the road is maintained in perpetuity and access for ingress and egress shall be granted to both lots 1 and 2 in perpetuity please raise your right hand.


The motion passed 4-1. Tom Mahon voted against the motion.

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There being no further business, Larry Blanks made the motion to adjourn the meeting and the meeting adjourned at 8:05 pm.

ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY

  
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VIC BOLTON, CHAIRMAN

  
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ATTEST