

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on October 26, 2020, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Marsha Hopkins, Chairperson
Tom Waller, Vice-Chairman
Bill Beckwith
Therol Brown
John Tate

STAFF PRESENT: Channele Blaine, Zoning Administrator
Howard Johnson, Planning & Zoning Coordinator

Welcome and Call to Order:

1. Consideration of the Minutes of the Meeting held on June 22, 2020.

Tom Waller made a motion to approve the minutes of the meeting held on June 22, 2020. John Tate seconded the motion. The motion passed 5-0.

2. Consideration of the Minutes of the Meeting held on September 28, 2020.

Chairperson Hopkins said that for September 28, 2020 minutes we will have to table, do I have a motion.

Bill Beckwith made a motion to table the minutes of the meeting held on September 28, 2020. Tom Waller seconded the motion. The motion passed 5-0.

PUBLIC HEARING

3. Petition No. A-735-20, Joseph L. and Karen B. Radest, request the following: Variance to Section 110-125. A-R (d) (6), to reduce the side yard setback from 50 feet to 33 feet to allow an existing residential accessory structure to remain. The subject property is located in Land Lot 63 of the 7th District and fronts on Diamond Pointe.

Joe Radest introduced himself. He said I live at 55 Diamond Pointe.

Marsha Hopkins replied please present your case to us.

Joe Radest said I have to be candid, this is very perplexing for me I had trouble understanding why I need a variance. He stated I bought this house in May 2019 and I went to build another external garage structure, which is now under construction but before I did that, I had a site survey done by Four Corners Surveying of my entire property. He stated

I worked with the Environmental Department here at Fayette County to make sure they were building the garage structure in the right area, no drainage issues, no setback issues, so my builder submitted the permit. He added during that whole process, the surveyor from Four Corners said the corner of your old gazebo structure came out to be about 33 feet from the property line.

Joe Radest said the gazebo structure was permitted in 2013 and built in 2014 by the prior homeowner. He noted what makes this very interesting is I got documents from Fayette County and it shows where the gazebo was built, (on a hand-written drawing), and it shows that the gazebo would have been built equal distance from the house and the pool and it was signed off by a septic inspector at the County. He noted if it had been built right there, it would have been atop the septic field, so that drawing from 2013 was incorrect.

Therol Brown asked, what did you say about the drawing?

Joe Radest replied the only reason why I am here is because my site surveyor did an entire drawing of nearly seven (7) acres of property in order to get a permit on a garage structure which is on the other side of the property. He said now I have to file a variance for something I didn't do. He concluded that why I am perplexed, I not am trying to be unjust, I am trying to understand and rationalize.

Chairperson Hopkins responded well okay, we will ask some questions, once your presentation is finished.

Joe Radest replied that's it, in a nutshell.

Chairperson Hopkins asked is there anyone else to speak in favor of the petition? She said even though it is obvious there is no else in the room, I do have to ask for the record, is there anyone here that wants to speak in opposition to the Petition? She said being and hearing none, we now have to open the phone lines for about a minute, so that anyone who wants to call-in and express any opinion or ask questions can do so. She announced that the number is 770-305- 5277. She added we will take about a minute just to see if anyone calls in and then we will bring it back to the ZBA to ask questions.

Chairperson Hopkins asked does anyone have any questions.

Tom Waller asked is this gazebo on a concrete base?

Joe Radest replied yes it is.

Tom Waller asked, is it wired?

Joe Radest replied yes.

Tom Waller responded thank you.

Chairperson Hopkins asked, Chanelle if the previous owner was issued a permit?

Chanelle Blaine said when you first come into the office an application is reviewed by the person at the front counter. She noted the property owner is supposed to give the staff a drawing showing the distance from the accessory structure to the property line on all three (3) sides, depending on where you have it on the lot. She added I wasn't there in 2013, but that is usually how the process goes. She noted we allow you to draw it in. She explained I think since 2016, we have required foundation surveys for accessory structures, so we don't have this issue, but at that time they allowed you to draw it in as long as it was two (2) feet greater than the setback. She explained so if the setback is 50 feet, if it is 52 feet was measurement that the homeowner or contractor put on the drawing, we allowed them to go to the next step.

Chanelle Blaine said looking now at this drawing, it shows that it was inside the buildable area. She added since it didn't provide the distance, for me that would have been a no-go. She stated I would have asked the contractor to label the distances from the structure to the property lines, because they are not provided on the drawing. She confirmed yes, there was a permit and it is unfortunate that the building was encroaching the setback even though it isn't his doing. She concluded he has to resolve it, unfortunately.

Bill Beckwith asked Chanelle was the distance determined when he applied for a permit for the garage?

Chanelle Blaine replied yes.

Bill Beckwith added so, they went out and checked and it possibly failed.

Chanelle Blaine replied no, when you want to build anything on your property, we look at it to see if there are any violations, because that is really the only time we can have people bring everything into compliance. She explained while reviewing the project, he provided a survey from Four Corners which showed the foundation of each building that he has on his lot. She added this is when we saw that the building was 33 feet from the property line, which was a violation. She noted we went to see if he had a building permit, we found out that he did. She said even though he did not pull that original building permit, he still has to fix what the previous owner did, it is just unfortunate, but we still have to bring it into compliance. She concluded we cannot allow it to sit there and not be addressed.

Therol Brown said I think the petitioner has every right to be perplexed. He added I think this grossly unfair, it looks to me it is the County's fault because they issued a permit and either knew or should have known with the final inspection that it was within the setback. He said I don't think it is the fault of the petitioner at all and it is unfortunate that the petitioner has to go through this. He concluded I will make a motion when you are ready

Madam Chair.

Chairperson Hopkins said I don't have any questions or comments.

John Tate said I agree with what Therol said in this particular situation. He added he came into a situation that was not one he created so the fault is not his own.

Chairperson Hopkins replied okay if there aren't any additional questions, are we ready for a motion?

Therol Brown made a motion to recommend approval of Petition No. A-735-20. John Tate seconded the motion. The motion passed 5-0.

4. **Petition No. A-739-20, Douglas M. and Pamela A. Carithers, request the following: Variance to Section 110-137. R-40 (d) (5), to reduce the rear yard setback from 30 feet to 10 feet to allow a residential accessory structure to be constructed. The subject property is located in Land Lot 165 of the 5th District and fronts on Savannah Court.**

Doug Carithers introduced himself. He said I am here with the petition tonight to see if we can get our rear yard setback reduced in order to build a small storage shed. He added due to the irregular shape of the property I think it is warranted. He explained there is a sketch of what we are proposing to do which I think it is fairly straight forward; the shape of the property is very irregular, and it is very long and narrow. He said currently I could place the storage building out very close to the road, essentially in the buildable area on the lot but if we can get some relief to push that forward, in my opinion, to a side yard. He noted the rear yard on that side of the property is effectively a side yard, visually. He concluded it would be better for the neighbors in the neighborhood not to have it sticking out there, it may appear to be out in the yard.

Chairperson Hopkins asked did you want to add anything else to that.

Doug Carithers said my wife would like to speak.

Pamela Carithers said we just felt like, aesthetically, it was going to look better for the neighborhood. She added it is for our lawnmower so it will be at the end of our driveway, so you would just drive straight in. She noted from the road aesthetically is going to look better, if we place it where we want to place it, I think that is our main concern. She noted we have been living in the house for 33 years and we are very proud of our house and we want it to look nice. She concluded we have a small neighborhood and so it is very important to me anyway, to keep it looking that way, so that is our main reason for asking.

Chairperson Hopkins said just as a procedural matter I have to ask is there anyone who wants to speak in favor of your petition. She added I don't see anyone else in the room.

She stated I also have to ask if there is anyone that would be opposed to it and I don't see anyone in the room. She announced so what we have to do is open up our phone lines for about one (1) minute in case anyone wants to call-in a make comment or have questions, so we are going to take a minute right now.

Pamela Carithers said we did have a couple of our neighbors that called us and said if they needed to come down they will be glad to do so, but I didn't know that I needed to give them the call-in phone number but they said they were all for it.

Chairperson Hopkins announced the number for the record is 770-305-5277. She added we will take just a minute and let folks call in if they want to and we then we bring it back to the Zoning Board for Appeals for discussion.

Chairperson Hopkins replied okay we will bring this item back to the ZBA does anyone have any questions?

Bill Beckwith asked, Mr. Carithers where is your septic tank drain-field?

Doug Carithers replied it is in the front yard of the house on the east side of the driveway. He added if you look in the front, there is a sidewalk which runs on the east side.

Bill Beckwith replied okay I see it, thank you. He said the reason I brought that up is because what we try to do is to see if there is an alternate location for buildings such as this that it doesn't violate the ordinance. He added I was looking at this layout, it looks like the back southeastern corner of your lot is open and available, but I understand what you are saying about the where the drawing is saying this could be. He concluded if you don't want it there, there are other locations.

Doug Carithers responded we are proposing to make better use of our yard. He added because our lot is so small with one (1) acre along with the linear aspect of the lot, we are probably the only lot configured in this manner anywhere, which is one (1) acre and has as much frontage as our lot so I am not aware of any lot anywhere that it so configured. He explained we have very little backyard space, so by putting it in the backyard will be encumbered because of the topography in the backyard, it limits our use to having an area for our grandchildren to play in the backyard. He concluded that was part of the reason for not wanting it behind the house but wanting it on the side.

Bill Beckwith replied what we normally look at is the matter of conveniences versus the violating the regulation, even though you don't want some place it doesn't mean it can't be put there. He added sometimes we have trouble approving something that violates the ordinance, when there are other options available that are satisfactory.

Doug Carithers replied I would say they are not satisfactory. He said it is a difference of opinion, but I would say that because of the irregular shape of the property puts an undue

burden on the use of property and not be able to utilize some of that portion of the lot off to the side to be able to place this building and not having anything else sticking out in the yard. He explained if I could build it where it potentially could go, that area can be used as a replacement area for a septic system. He concluded that would also place an undue burden on us if we were to build it there and then come to find out that our septic system needed a replacement area, it would have to be over there where technically this building would be placed.

Bill Beckwith replied I just wanted to bring that point out for the other ZBA members to consider.

Doug Carithers replied I understand.

Chairperson Hopkins asked how long have you lived there.

Doug Carithers replied this December will be 33 years.

Chairperson Hopkins replied okay.

Therol Brown asked if the owners of the property directly behind where you are proposing, are they okay with it.

Doug Carithers responded I have not spoken with them. He added that property is not part of our subdivision, they are on an isolated parcel that is off of White Road.

Therol Brown asked is there a buffer?

Doug Carithers replied no, there is vegetation. He added if you look at the aerial my neighbors behind me that you are speaking of have a storage building that is five (5) feet from the property line.

Therol Brown replied oh really?

Doug Carithers said that is correct, I am not in objection to him doing that.

Pam Carithers said we really don't know if anyone is living there right now. She added we don't even know who owns the house now.

Therol Brown said I was just curious because they will be affected more than anybody else.

Doug Carithers said I guess in theory it would but they see fit to have their building as you see it there.

Therol Brown said my personal opinion is you are right about the irregular lot, it is quite

irregular. He added the fact is that you can legally build it, but aesthetically you are exactly right it would not be nearly as pleasing to the eye as it would at the end of the driveway, which you are proposing.

Pam Carithers said our back yard space is so small. She added anyway we have seven (7) grandchildren and they barely have a place to play as it is because it is so narrow that we didn't want to take that space away.

Bill Beckwith said in a way I think this is a really an unusual situation with the size and layout and organization of that lot. He added this is tough decision but I understand about the aesthetic and the grandchildren, of course.

Chairman Hopkins said I guess my comment is that Bill is certainly right, when we think there could be a possible option or alternative that fits within the regulation that is certainly a consideration. She added as I think about this, it is a very unusual piece of property in term of its shape. She concluded I guess the reason I asked you again how long have you lived here is because I thought I heard you say, if you had to replace or relocate the septic system, that place that is within the setback is probably the best location to relocate that if that had to happen.

Doug Carithers replied that is correct, it's really the only logical place without any type of engineered system, where we can utilize the gravity flow. He added because of that I don't want to encumber that part of the property. He explained if you look at the way the lot is shaped, my understanding why is that the entire subdivision was laid out around our property to make is exactly one (1) acre to swing the road in such as way. He added there are two (2) houses on our side of the street, all of the other houses are on opposite side of the street. He noted since there is also floodplain on the other side, they minimized our lot and our configuration was sacrificed. He said we are fine with it, but it does pose a layout problem on where to put something and if you put it the backyard then it hurts the ability use our back yard. He concluded it's very small now for a one (1) acre lot but I think those conditions justify this request.

Chairperson Hopkins, asked does anybody else have any comments? She added does anyone want to make a motion?

Therol Brown made a motion to recommend approval of Petition No. A-739-20. Bill Beckwith seconded the motion. The motion passed 4-1.

5. **Petition No. A-740-20, Charles K. and Heidi B. Bridges, request the following: Variance to Section 110-125. A-R (d) (4) (a) (2), to reduce the front yard setback from 100 feet to 81 feet to allow a covered front porch to be constructed. The subject property is located in Land Lot 252 of the 4th District and fronts on McBride Road.**

Heidi Bridges introduced herself and stated that she resides at 657 McBride Road, Fayetteville. She said we are petitioning for a variance from the 100 foot setback to 81 feet, we are looking to do a full home remodel / renovation. She added you have the site plan or the retracement survey and it shows the current house which was built in 1972, is currently sitting 82.4 feet from McBride. She explained the 100 foot setback was set after the home was built. She said it also shows the proposed construction of the porch to be 81 feet. She concluded we are looking a variance from 100 feet to 81 feet but it is 1.4 feet difference from where the house currently sits, is the difference that we are requesting.

Chairperson Hopkins responded okay, I don't see anyone else in the room, but I have to ask for the record, is there anyone else here to speak in favor of your petition?

Chanelle Blaine stated I would like to read an email from one of her neighbors who wanted to be here, but couldn't.

Chairperson Hopkins replied okay.

Chanelle Blaine read the email as follows:

This appeal hearing for this evening is at 7 pm which I am not able to attend, however I am corresponding to you to formally submit my full approval and endorsement for number A-740-20. I am the homeowner that lives across the street on the corner of Bride Road and Belfair Run. Please enter my approval and endorsement into your official records. I thank you in advance for all of your help with this matter.

Sincerely,
Lloyd A. Ruiz (Reese)
100 Belfair Run
Fayetteville GA 30215
(502) 216-0951

Chairperson Hopkins replied thank you. She said I don't see anyone else in the room, so the assumption is there isn't anyone here to oppose it. She announced we now have to open up our phone line, for about a minute to let the public call-in, if they choose to. She added the number for the public to call is 770-305-5277 and then we will bring it back to the Zoning Board of Appeals for questions.

Chairperson Hopkins said okay we will bring it back to Zoning Board of Appeals for questions.

Chairperson Hopkins asked Chanelle so this house was already non-conforming?

Chanelle Blaine replied yes.

Chairperson Hopkins asked is there no variance on record?

Chanelle Blaine responded no, I believe the house was created years before we had a zoning

ordinance. She said the fact is that they don't have enough acreage, and it fronts on McBride which is a highly used road, which has a large front setback, and it was already there. She added it is a legal non-conforming lot.

Chairperson Hopkins replied okay, that was my only question, thank you, anybody else?

Bill Beckwith made a motion to recommend approval of Petition No. A-740-20. John Tate seconded the motion. The motion passed 5-0.

6. **Petition No. A-741-20, Scott R. Sells, requests the following: Variance to Section 110-125. A-R (d) (d), to reduce the side yard setback from 50 feet to 4 feet to allow an existing residential accessory structure to remain. The subject property is located in Land Lot 193 of the 4th District and fronts on Carrolls Way.**

Scott Sells introduced himself. He said that I live at 215 Carrolls Way, Fayetteville.

Chairperson Hopkins said please go ahead and present your petition to us.

Scott Sells said so my request is to keep an accessory structure, a small barn, for lack of a better word. He added I do have a photographs of the structure, if anybody would like to see them. He noted it's been existing for quite some time but not long enough to already have exceeded the statute of limitations and Chanelle has already researched that for me. He stated everything we could find is potentially as old as 2000. He added it could have been there for up to 20 years, certainly even before the gentleman before me. He said I just recently purchased it this year, we were doing a renovation to it, an addition, and then at the time of applying for the permits it was pointed out that the structure needed an approved variance or the structure will have to be torn down. He concluded it is an ugly building currently, as you can see in the pictures. He concluded we want to make it look good and nice, but of course we didn't want to put any money into it without a variance first. He said we request permission to keep the structure. He concluded my next door neighbor is Clint Delaney shares the border line with me who says he is fine with the structure and he wanted me to make that known here.

Chairperson Hopkins said okay, I don't see anyone else in the room, so my assumption is no one else is here.

Scott Sells said I took some pictures from the street view and you can't even see it until you're half way down the property line. He added from the street you can't even see it. He stated the first picture I took was from the mailbox and it is completely invisible, because it is to the right of that photo. He said as you make your way through you will walk down the driveway and then you will finally see the building. He explained what I was attempting to show in the photos in stages was the lack of impact to most of the community. He noted of course, that it borders with, Mr. Delaney, who is okay with it,

there is a tree line behind the building. He said when you are looking at the pictures you can see a large tree line behind and to the side of the building. He concluded so that gives coverage from his point of view in the direction he is looking at.

Therol Brown asked so other than you and your family, you can't see it from anywhere else?

Scott Sells replied that is correct, it is practically invisible at that point. He added there were several people who stopped and asked what the variance was about and they could have called the number. But since they were new neighbors they want to meet us anyway so they said they didn't know the barn was there.

Bill Beckwith asked is that where the construction is taking place?

Scott Sells responded no, the construction is taking place on the residence. From the front view of the home to the left hand side, a master bedroom, bathroom, and closet is being constructed.

Bill Beckwith, asked are you planning to do anything with the barn if it is approved?

Scott Sells replied we plan to clean it, put on T-1 siding, paint it and change the doors.

Chairperson Hopkins said we still have to acknowledge whether there is anyone to speak in favor of the petition and I don't see anyone else and is there is anyone who is opposed to it, I don't see anyone. She announced that we have to open up our phone lines for about a minute, in case someone wants to call-in, so we take about a minute break. She said the number for calling in is 770-305-5277 and afterwards we will bring it back to the ZBA for any more questions.

Tom Waller, asked sir did you purchase the property this year?

Scott Sells replied that is correct, we purchased it three (3) months ago.

Tom Waller, asked did the realtor point out to you this violation?

Scott Sells responded no that actually was a point of contention, by the time we closed I did know about it. He added at the time we went under contract, it was not disclosed. He explained on the seller's disclosure where it asks if there are the any encumbrances, setback violations, and building code violations, all of his answers were no through our due diligence. He said I am my own agent, also as a property manager, you have to have the same licenses. He said as I was going through the research, I got a copy of a survey, done back in 2016 that showed it was outside the setback. He concluded it is the actually the copy you have before you.

Scott Sells said it was a long back and forth between myself, my agent, and their broker about the importance of seller's disclosures. He explained I did follow through with the purchase, even knowing that. He added that it was certainly my choice, but not at the time of sale, and not on the disclosure beforehand, but we didn't want to lose out of the property at that point. He noted it is a beautiful piece of land and six (6) acres, great location. He concluded we knew that was the risk we were taking but we were willing to take it.

Tom Waller, asked was this a local realtor that you were dealing with in this County?

Scott Sells replied yes.

Tom Waller, asked did you walk the metes and bound of this property before you made the purchase?

Scott Sells responded before we closed, yes but not before the offer.

Tom Waller, asked so you were aware of the encroachment of this concrete pad onto the neighbor's lot.

Scott Sells replied that is correct.

Tom Waller asked so what did the reality company say about that?

Scott Sells responded they had him amend the seller's disclosure, but for us it was an emotionally done deal. He added it was the house we wanted to buy anyway. He explained we had a negotiation with them, I wanted them to contribute \$5,000 towards our closing, due to this being an issue, because the appraisal added \$4,000 in value for the structure when comparing to it other properties. He then said the cost of having enough dumpsters for the demo will be another \$1,000, so I wanted him to give me \$5,000 in the event I had to tear it down, but he wouldn't sign an agreement stating if you guys made that decision today, he would pay that cost, so we wound up meeting in the middle and settling for \$2500 contribution at our closing.

Chairperson Hopkins, asked if there was anyone else to speak?

Being none, she asked, if anyone was ready for a motion?

Therol Brown made a motion to recommend approval of Petition No. A-741-20. John Tate seconded the motion. The motion passed 3-2.

Scott Sells replied thank you very much, I appreciate your time.

7. **Petition No. A-742-20, Ronnie W. Ard, Executor, request the following: Variance to Section 110-129. R-80 (d) (3), to reduce the minimum dimensional requirement of 2,500 square feet to 1,954 square feet to allow an existing primary residence to remain. The subject property is located in Land Lot 228 of the 4th District and fronts on Highway 85 South. Applicant requests petition be withdrawn.**

Chairperson Hopkins said can I have a motion that to withdraw this petition.

John Tate made a motion to recommend withdrawal of Petition No. A-742-20 per the applicant's request. Bill Beckwith seconded the motion. The motion passed 5-0.


Chairperson Hopkins said being no further business, we will adjourn the meeting, can I get a motion to adjourn?

Therol Brown made a motion to adjourn. Tom Waller seconded the motion. The motion passed 5-0.

The meeting adjourned at 7:56 pm.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**


MARSHA HOPKINS, CHAIRPERSON


HOWARD L. JOHNSON, ZBA SECRETARY