

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on April 26, 2021, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

**MEMBERS PRESENT:** Therol Brown, Chairman  
Bill Beckwith (Virtual)  
Tom Waller  
Marsha Hopkins

**MEMBERS ABSENT:** John Tate, Vice-Chair

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

1. Consideration of the Minutes of the Meeting held on March 22, 2021.

*Marsha Hopkins made a motion to approve the minutes of the meeting held on March 22, 2021. Tom Waller seconded the motion. The motion passed 4-0. John Tate was absent.*

### **PUBLIC HEARING**

2. **Petition No. A-752-21, Frederick M. Monderson & Keisha Monderson Johnson, Owners, and Keisha Monderson Johnson & Jonathan Johnson, Agents, request the following:**
  - 1) **Variance to Sec. 110-125. A-R, (d) (6), to reduce the side yard setback from 50 feet to 21 feet to allow an existing barn to remain.**
  - 2) **Variance to Sec. 110-125. A-R, (d) (6), to reduce the side yard setback from 50 feet to 47 feet to allow an existing garage to remain.**

**The subject property is located in Land Lot 20 of the 9<sup>th</sup> District and fronts on Peters Road.**

Chairman Brown asked is Ms. Johnson present?

Channele Blaine replied Ms. Johnson is virtual.

Chairman Brown said before we begin I would like to advise you that we have one (1) member who is absent tonight, so we only have four (4) of the five (5) members of the Zoning Board of Appeals present. He added you have the prerogative to proceed with four (4) members or if you like you can wait until we have a full board of ZBA members here, it is up to you.

Keisha Johnson Monderson responded I would like to proceed if the fact that one (1) member is missing is not going to be held against me.

Chairman Brown said okay, we can proceed.

Chanelle Blaine said Therol, we need to read the rules and procedures for tonight.

Bill Beckwith said Therol, I think it will be beneficial to explain to Ms. Johnson that the vote has to be three (3) votes in favor of the motion because a two (2) - two (2) split means a denial.

Chairman Brown responded good point. He said Ms. Johnson, it will take three (3) favorable votes for your approval. He added I just wanted to make sure that you understand that a two (2) - two (2) tie vote would not be favorable to you.

Keisha Johnson Munderson replied okay. She asked who is actually missing, is it the main decision maker?

Chanelle Blaine responded they all have an equal vote.

Keisha Johnson Munderson replied I did postpone this one time because of death in my family and I don't want to postpone it again.

Chairman Brown replied that's fine, if you want to proceed. He added I just wanted you to be clear that it will take three (3) votes for an approval.

Keisha Johnson Munderson asked do you mean three (3) of the four (4) members are present here tonight? She added we actually need this variance to move forward with our building permit. She said if we can't move forward with the building permit then we will have to have wait another month. She explained I have never done this process before so I am just trying to move forward versus waiting another month because that pushes everything back in my situation.

Chairman Brown replied okay. He said Howard, please proceed with reading the meeting procedure.

Chairman Brown said Ms. Johnson please introduce yourself and state your case.

Keisha Johnson Monderson said good evening everyone, I co-own the property with Michael Monderson. She added we are attempting to build a retirement home. She explained at the time we were proceeding with the building permit, the zoning office noted the setback issues with of the existing barn and the existing carport which has been on the property since the house was built. She said they were puzzled because the property was re-parceled. She noted our neighbor who lives at 160 Peters Road was able to parcel off five (5) acres of the land based on the acreage requirements for the A-R zoning, adjacent to the barn and carport. She pointed out that the County allowed that to happen with the existing structures. She said now that we are moving forward with our building permit to build on our property behind the 160 Peters Road address, we are being told that we have to obtain a variance.

Keisha Johnson Monderson continued I am standing before you to see if you can approve the variance for these two (2) structures because they already existed before we bought the property:

there was nothing that we put up. She noted it is a fully functional six (6) stall barn as well as a carport. She added again, the County allowed the re-platting and the sale of five (5) acres that was originally part of the property to another owner knowing the setback requirements at that time. She concluded I am asking that this be approved so we can move forward with our process of a building a home.

Chairman Brown asked is there anyone in the audience who wishes to speak in support of this petition. Being none, he asked is there anyone in the audience who is opposed to this petition.

Dorothy Scoma (160 Peters Road, Fayetteville) said that she has no problem with the carport variance, however I do have a problem with the barn variance. She added that barn has been there for a long time, but our barn has been there for about 125 years, which was part of a bigger lot at that time. She explained the problem that I have with the 21 foot variance is that is very close to my property, where there are two (2) or three (3) structures, an orchard, a chicken pen and rabbits. She expressed her concerns that if the barn were to catch on fire. She said I am afraid that part of my property would be destroyed. She also said that I have no other problems other than but there is a big difference between 21 feet and 50 feet. She mentioned that Ms. Johnson said the structure was there, and we had nothing to do with them being there. She noted when we bought the property all the surveys were approved at that time and it didn't seem to be a problem. She said I don't know that property was surveyed when we bought ours. She concluded the only problem I have is the threat of fire, because of the foliage, and I hate to say it because it is a beautiful barn, but I do have that issue.

Chairman Brown asked does anyone else in audience, have any comments or questions.

Marsha Hopkins asked Therol, does Ms. Johnson get a chance for a rebuttal?

Chairman Brown replied I think so, but I am wondering if there are any comments from any callers. He asked should we do that now?

Chanelle Blaine responded let's wait until after she has given her rebuttal. He then asked would you like to rebut?

Keisha Johnson Monderson responded I am little puzzled with our neighbor stating that the house was there for 125 years. She added that was something that I was unaware of. She noted again, my case is that these structure were already existing and the previous owner had the barn and the carport. She said this house was built in 1983 and there is was no fire threat, to my knowledge when we purchased the property in 2017. She expressed I am also a little puzzled that I am getting objections to something that we would never want; to have a fire on our property and damage anything around or next to it. She added if that is a big concern we would definitely have to do something about it.

Keisha Johnson Monderson noted there are several other structures on the Scoma property but I don't know if they were permitted. She said we had the County come out to even inspect because

we are moving forward with building a retirement home. She explained we are doing our due diligence on our side to make sure we respect every ordinance that is out there. She expressed that I feel that my husband and I (both retired veterans) are being penalized for existing structures and having to have to go through a ton of paperwork and payments to the County for stuff that was already there.

Keisha Johnson Monderson she noted there are at least 10 to 15 structures next door to us and I don't know if the County has come out to see if those structures including chicken pens were approved. She said what other do on their property is their business, I don't care about that but I care about my property. She noted there are also structures next door that are close to orchards that are being mentioned right now. She said the chickens do jump the fence, however being neighborly, we just tell them maybe there is a hole in their fence or something else.

Keisha Johnson Monderson said by no means would we allow a fire to occur if we are planning to utilize the barn and when the barn is refurbished or redone, it means that it will be a newer structure than a home that's a 125 years old, as well as the properties around it. She explained I didn't do my due diligence to look at the year the house was built, however if that house was built before us, why would they allow for five (5) acres to be on such an odd shaped lot which land locks the part of the property that is exactly five (5) acres, we have 43 acres on the property that was sold to us. She stated I am just a little puzzled that comment would be made when those structures has been existing for a long time because there were people living here before we got here. She concluded I don't know if this complaint was made previously to us purchasing this property and it was recorded in the County anywhere, that is the question that I have.

Dorothy Scoma said first, the property is zoned A-R, which means we can have chickens. Secondly, that property is a perfect square; thirdly, none of the structures that we have encroach on to the property next door to us, and they are all within our property boundaries.

Chairman Brown said I would now like to open the phone lines for any citizen that would like to comment for or against this petition. He added the call-in number is 770-305-5277, we will allow one (1) minute to see if anyone calls-in.

Chairman Brown said that she needed a moment to contact Information Technology since there are problems with the computer software connecting to the outside phone lines. She then announced that we are not going to be able to use the phone lines tonight since we are unable to log into the system.

Chairman Brown responded since we are unable to use the phone lines, are there any comments and questions from the members of the ZBA?

Bill Beckwith it appears to me that the Mondersons bought this large plot of land in 2017. In 1998 the Scoma property was cut out from a large piece of property. He added when the five (5) acres for the Scoma's was split up that caused boundary lines around that property and that five (5) acres parcel caused the existing barn and the existing garage to be too close to the property line. He

concluded if that property line was not there it would be no problem at all.

Chairman Brown responded that's is the way I understand it too, Bill.

Bill Beckwith responded when the new property line was put-in, that caused the side yard setbacks to be reduced. He added that is a situation that had nothing to do with the Mondersons, it was just there. He noted when they bought the property, and they bought a large piece of property, so I don't think really this is an issue. He concluded in my estimation we should approve both variances.

Chairman Brown asked are there any other comments?

Marsha Hopkins said I agree with what Bill is saying. She added this issue didn't exists until that property was carved out, so this is the consequence of that and I agree with Bill.

Chairman Brown said if there are no other comments, I will entertain a motion.

*Marsha Hopkins made a motion to recommend approval of Variance #1) of Petition A-752-21 to reduce the side yard setback from 50 feet to 21 feet to allow an existing barn to remain. Bill Beckwith seconded the motion. The motion passed 4-0. John Tate was absent.*

*Bill Beckwith made a motion to recommend approval of Variance #2) of Petition A-752-21 to reduce the side yard setback from 50 feet to 47 feet to allow an existing garage to remain. Marsha Hopkins seconded the motion. The motion passed 4-0. John Tate was absent.*

Dorothy Scoma said thank you for giving me an opportunity to speak, and I wish my neighbors well and I hope that they will be very happy in their new retirement home.

Chairman Brown replied thank you for the remarks.

Keisha Johnson Monderson replied I would like to thank you all for your time this evening again for allowing me the virtual option due to a last minute health crisis and I appreciate your time with Fayette County.

Chairman Brown replied thank you and good luck.

3. **Petition No. A-754-21, W&W Realty Co, LLP, Owner, and All Span Builders, Inc/S. Neal Brown, Agent, request the following: Variance to Section 110-173. Transportation corridor overlay zone. (3) General state route overlay zone (d) Architectural standards. (1) To allow a flat roof with parapet walls instead of a gabled roof with a minimum pitch of 4.5 inches in one foot. The subject property is located in Land Lot 253 of the 4<sup>th</sup> District and fronts on Highway 85 South.**

Chairman Brown asked Neil Brown to come to the podium and present his case.

Neil Brown said he is the owner of AllSpan Builders here representing W.W Realty and Green Oil.

Chanelle Blaine said I am sorry to interrupt but Therol did you tell him we only have a four (4) members here tonight.

Chairman Brown said Mr. Brown as you know we have five (5) voting members on the ZBA. He announced John Tate has had a death in his family so he is not with us tonight, so we only have four (4) members. He added it takes a sum of three (3) votes for you to be successful in your petition. He stated you have the option to proceed with four (4) members tonight or you can delay until we have five members.

Neil Brown responded I am good with proceeding tonight. He added this is actually a follow-up from some work we did back in January so I think everyone familiar with the design issues of this site. He said I am sorry to hear about John Tate's loss, but I am willing to go ahead and I would like to thank the staff and the ZBA in hearing me again on this site.

Neil Brown said I worked through the designs of this facility and keeping with the setbacks that you approved in January but now, I am asking for an alternate roof design. He added please keep in mind this type of building is used in many convenient stores/ retail facilities and quality corridor overlays around the Atlanta metro area. He explained I can appreciate the gable design and architectural look but in this case to alleviate having to put the mechanical systems in the back parking area, we need to design it where it can be hid on top of the roof inside the parapet walls where you don't see them at all.

Chairman Brown asked Mr. Brown would you explain to us what's all involved with a mechanical roof.

Neil Brown replied if you look at the application, I included some pictures of a similar facility. He noted I have included a few past project elevations in the package but I have some larger ones usually drawn to the approved footprint on January 25, again this is still proposed. He explained we are not trying to just build something that costs less, actually it cost more to rate the roof structure to carry these loads than to put them on the ground or in the parking lot but I have the original site plan that was approved in January. He said I think there is a smaller site plan included in your package, but here is a larger one here that is easier to read. He concluded by ZBA approval this request, we can proceed with the initial site plan that we agreed to in the January.

Chairman Brown asked did you say that it actually cost more to do it this way?

Neil Brown replied correct, we have to size the structure to handle the dead loads, seismic loads and wind loads to handle that kind of mechanical system going on the roof. He added we are trying to move forward to what we have master planned in January. He also said by having some communications with the neighbors around the project we have agreed to put a fence between the store and Kathy Smith's property because she was concerned with some safety issues. He stated

this brand new facility should have less issues than the old US Station store that has seemed to have taken on an abandoned look. He concluded I am asking for a reduction in the roof design to utilize space.

Chairman Brown asked is there anyone in the audience that wishes to speak in support of the petition, being none, he asked if anyone wanted to speak in opposition of the petition. He then asked for the speaker to come to the podium to sign in and state you name, please.

Katherine Smith said good evening, I as well as these gentleman standing here actually own some property that is adjacent to the gas station around the back of the store. She added I would have been here in January had I knew there was a hearing at that time. She said when I became aware of this meeting, I went through the documentation that was online. She explained our concern is that by having this flat roof and moving the air conditioners up to the roof, it is allowing for additional parking space in the back of facility. She noted since our residential property backs to the that facility; we have young children and there are a lot of people in this area that backup to this property who have young children whom have numerous issues with this facility since we move in here and it not just being vacant. She said since we actually approached these gentleman outside and tried to see if they would like to do some security fencing or something that would protect our property. She continued that is our concern. I understand that they want to put in a business that is three (3) times the size, but in our eyes, that is three (3) times the trouble that it bring into this neighborhood. She stated by allowing this flat roof, it allows for additional parking spots near the property line right behind the facility.

Chairman Brown replied I think in all fairness to the County and to this body, what you said we are here to approve the petition with the roof design, the zoning and the parking space requirements, Chanelle, I assuming has already been met and satisfied.

Chanelle Blaine said it goes through a site plan process and then we calculate the parking at that time. She added I can't tell you how many parking spaces are going to be required for the building right now, because we haven't received a site plan yet.

Chairman Brown responded my point was we are not here to approve the zoning or the use of the business, we are here strictly for the roof design variance.

Katherine Smith replied I understand that sir, but allowing that variance and that roof will allow for the additional parking and additional capacity which potentially be an issue for those around there.

Chairman Brown asked is there anyone else in the audience that wishes to speak in opposition of the petition.

Tom Lamb said I want to second what she said, I am just concerned about the security for our property. He added I know you are here to talk about the differences in the roof but if you allow them to have a flat roof that is going to create more space for them to have more parking and then more people. He explained we are just asking for some sort of barrier along the fence along our

property lines. He noted we know there is a business there and they were zoned for that long before our houses were built. He said the fact is the houses are there and there are small children and just down the street. He added a year ago a robbery occurred in that store and the people that robbed that store ran around the back into the neighbor's back yard without a fence, to get away. He concluded we were hoping this wasn't going to happen, again

Chairman Brown asked does anyone else have any comments?

Clay Trammell said I own the third property adjacent to these two (2) properties located behind the proposed gas station. He added I really want to second these same things as well and that there should be a fence. He noted I understand perhaps there was another meeting where zoning and all that were questioned, but I have not studied the plans to the degree necessary but it sounds like it has not even been determined where the parking will occur but my understanding is that this particular roof variance does potentially affect the parking because there is where the equipment will reside. He added so there is a concern that parking in the back of the facility that is perhaps not visible from Highway 85. He concluded to me that would be a security concern and that parking is directly adjacent to several residential properties, I just wanted to express my concern.

Chairman Brown said okay Mr. Brown do you wish to respond to those comments or say anything else?

Neil Brown said I am sensitive to the concerns of the neighbors but when you look at the site plan there is a retention pond behind the store, so we have agreed to fence Cathy and Mark Smith from property line to property line. He added I also would like reiterate that the business is coming, it's already zoned, it's already approved and the setbacks have already been approved. He explained we are simply trying to make the most efficient center for the community so there is a minimum parking requirement for a certain amount of square footage in commercial, this is in building process and the planning department review.

Neil Brown said right now, our preliminary calculations denoted we need every one of those parking spaces. He added it is not that we are trying to add to parking spaces that are not part of the initial approved plan and we are trying to stay with that plan. He noted there was almost a year of planning with Pete, Chanelle and myself and the owners before we brought the plan in front of you guys. He stated with all of that being said, we are agreeing to the fence. He said if somebody is trying to run to the Smith's property, they will have to run through a detention pond, it's not the route they would go, thank you.

Chairman Brown asked are there any other comments. He asked if the phone line are still out of order.

Chanelle Blaine replied the phone lines are still out of order.

Chairman Brown announced that we are unable to take calls tonight. He said since the phone line is not working, I will turn it over to the ZBA members for comments. He added hearing no

comments from ZBA members, I will entertain a motion.

***Tom Waller made a motion to recommend approval of Petition A-754-21 to allow a flat roof with parapet walls instead of a gabled roof with a minimum pitch of 4.5 inches in one foot. Bill Beckwith seconded the motion. The motion passed 4-0. John Tate was absent.***

4. **Petition No. A-755-21, Max H. Fuller, Owner, requests the following: Variance to Sec. 110-125 A-R, (d) (6) to reduce the side yard setback from 50 feet to 42 feet to allow an existing carport to remain. The subject property is located in Land Lot 233 of the 4<sup>th</sup> District and fronts on Goza Road.**

Chairman Brown asked the applicant to come to the podium, sign-in and present his case.

Max Fuller said the carport / garage was built in 1986. He added I went to check to see if the setback was more or less than 50 feet. He said the building sits on 20 acres of the 100 acres, it is has been there for 35 years. He concluded this came about because I am trying to separate a 15 acre lot to have a five (5) acre lot to give my grandson

Chairman Brown asked if the garage was built in 1986?

Max Fuller replied it was.

Chairman Brown said I guess that is basically the issue in and of itself. He added did anyone else in the audience have any comments. He asked is this your grandson?

Max Fuller replies yes it is?

Chairman Brown asked did you want to say anything sir?

Mr. Fuller (grandson) replied, no sir.

Chairman Brown asked is there anyone in the audience who wishes to speak for or against the petition. Hearing none, he asked the members of the ZBA if they have any questions or comments.

Chairman Brown said hearing no comments from the ZBA members, I will entertain a motion.

***Tom Waller made a motion to approve Petition No. A-755-21, to reduce the side yard setback from 50 feet to 42 feet to allow an existing carport to remain. Marsha Hopkins seconded the motion. The motion passed 4-0. John Tate was absent.***

5. **Petition No. A-757-21, Shakiya C. Henderson, Owner, requests the following:**

- 1) **Variance to Sec. 110-79. Residential accessory structures and their uses, (e) Residential accessory structures located in a front yard, to allow an existing shed to remain.**
- 2) **Variance to Section 110-137. R-40, to reduce the front yard setback from 50 feet (as required in 1978 when the subdivision was platted) to 7 feet to allow an existing shed to remain.**

**The subject property is located in Land Lot 228 of the 5<sup>th</sup> District and fronts on Kenwood Road.**

Chairman Brown asked the petitioner to come to the podium, sign-in, state your name and present your request.

Shakiya Henderson said currently my shed is encroaching onto my front yard. She added it is so close you can see it from the street. She noted the topography of my lot flows downward along a steep hill into a creek area. She explained that all of rain from the front street rolls down my driveway into the parking pads. I also have drainage pipes down in that area. She noted my septic tank is at the top of the hill in front of my house. She said placing the shed anywhere down the hill will be placing it in the area that the water pools. She added to prevent damage to the shed, I didn't think it would be safe to place my shed on this wet ground. She noted that this area is a very moist area and it doesn't contain grass because sometimes the creek overflows.

Shakiya Henderson said the majority of my lot acreage is across the creek. She added I don't have the ability to place my shed behind the 50 foot setback line because it would be in the creek. She noted the 50 foot setback is probably within five (5) steps of the creek. She then explained on the other side of my property, I have used the space for a pool that is on the 50 foot setback line. She noted I don't even have 15 feet remaining, so based on the rules I can't put a shed there either. She concluded it is just the topography and the way the parcel was created that won't allow me to move the shed from the current location. She added so that is my extraordinary reason for why I needed to place it on dry land to make sure it won't get water damaged.

Chairman Brown asked did you address your second variance about the 50 feet to 35 feet?

Chanelle Blaine replied Therol, it's not 50 feet to 35 feet it is 50 feet to seven (7) feet. She added initially it was thought to be 35 but someone went out and measured and it is actually seven (7) feet. She said I placed the new staff analysis at your seat.

Chairman Brown responded I may just have missed it I am sorry. He then asked was the shed existing or did you recently buy it?

Shakiya Henderson replied I bought the shed last year, maybe August 2020.

Chairman Brown asked is there anyone in the audience who would like to speak in support of this petition or in opposition of this petition? Being none, he asked if there are there any questions or

comments from the members of the ZBA?

Chairman Brown said I have a couple of questions. He asked isn't that building fairly mobile, was it delivered to you on a truck?

Shakiya Henderson responded yes, it was delivered on a truck.

Chairman Brown asked was there absolutely no other location you could have put it?

Shakiya Henderson replied if you take a look at the picture of the home, it shows the driveway.

Chairman Brown said I can't tell from this one that I have the topo.

Shakiya Henderson responded I understand you can't tell because it is shaded a lot. She added on the opposite side of my driveway, there is a steep hill. She said the only way to have access to any of my back yard is by driving down my driveway. She added to move the shed you will have go down a hill. She noted on the opposite side I have parking pads and then I have a creek. She also noted that the slope of my property is sloped so that the water can flow down the driveway, which again is the only way to get to my house. She concluded all of the water from the rain down eventually flows down from the front yard into that that area.

Shakiya Henderson said that by moving the shed down the putting it on the parking pad, the same way that the water flows is putting it in that wet area. She added I can stand it up and put gravel underneath but there is still water movement and leaves will get caught up under there. She expressed I thought it through before I placed the shed. She concluded I would have preferred for it to be in my back yard but because of the wetness of the backyard that will cause it to sink.

Chairman Brown replied I really can't tell from the drawing, how the topo exists.

Shakiya Henderson said on this picture it shows the water flow movement, that is what I wrote in, but if you can't see it, look at the opposite side, it says driveway down, you will see how close the creek is to that area. She concluded I don't have much backyard space to play in so the slope is really tight in the back yard. She added at my home, the useable flat land is in the front yard.

Chairman Brown asked how long have you been there?

Shakiya Henderson replied I have owned the home since 2013.

Chairman Brown asked have you had any complaints from neighbors about the building.

Shakiya Henderson replied no, I think the neighbors like the idea because that area is wooded because of the creek. She noted that is the end location of the creek on my side where there are a lot of wooded areas so it actually adds some type of value to the end of the creek.

Chairman Brown said I don't have any further questions, if there are not any further questions, I will entertain a motion.

Chanelle Blaine said let's do each motion separately.

Chairman Brown said I need to back up, please forgive me but I need to inform you we have one (1) member absent tonight because of a death in the family, so we only have four (4) of the five (5) members present. He added you have the option to proceed with four (4) members or you can wait until we have a full ZBA here. He noted however it does take three (3) favorable vote out of five (5) or four (4) tonight to have a favorable decision on your part. I apologize for not telling you to start with.

Shakiya Henderson said I will have to wait until the next zoning meeting?

Chanelle Blaine said yes, you will have to wait until next month.

Shakiya Henderson asked if the vote is two (2) - two (2) then I will be required to come back to the next meeting.

Chanelle Blaine said no, if it is two (2)- two (2) it will be a denial, then you will be asked to either move the shed, so it will be in compliance or you will have to get rid of it.

Shakiya Henderson replied okay, that makes sense. She added I want to go forward.

Chairman Brown said I want to apologize again for not bringing this up at the start.

Marsha Hopkins said clearly from your explanation, your land is such that it is difficult to move drainage, and that sort of thing to find the most optimal spot for something like that. She added looking at the picture as well that you provided, it looks like it is framed by trees and shrubbery, is not blocking anything from the road because in my mind when I think about setbacks, a lot of that is designed for safety and security, too. She noted police patrolling the area need a line of sight, if there is something obstructing that view, they can't see. She added this looks like it very well shielded from what I can tell from this picture from the road. She concluded given the topography of your land I would recommend a motion to approve variance #1 to allow the structure to remain.

Bill Beckwith commented I have lived right around the corner of this location for 44 years. He added I have always noticed that home there and I found it interesting that anything could be built on that property. I know that it drops off, so I know that is steep therefore, I second the motion.

Shakiya Henderson said that is where the slope is so it will slide down.

***Marsha Hopkins made a motion to recommend approval of Variance #1) of Petition A-757-21 to allow and existing shed to remain. Tom Waller seconded the motion. The motion passed 4-0. John Tate was absent.***

*Marsha Hopkins made a motion to recommend approval of Variance #2) of Variance to Section 110-137. R-40, to reduce the front yard setback from 50 feet (as required in 1978 when the subdivision was platted) to 7 feet to allow an existing shed to remain. Bill Beckwith seconded the motion. The motion passed 3-1. John Tate was absent.*

6. **Petition No. A-758-21, Jimmy & Gloria Smith, Owners, and Cymona West, Agent, request the following: Variance to Section 110-133. R-70, (d) (6), to reduce the side yard setback from 20 feet (per the final plat) to 5 feet for an existing garage that is under construction. The subject property is located in Land Lot 192 of the 5<sup>th</sup> District and fronts on Camelot Drive.**

Chairman Brown asked to petitioners to come forward, sign-in, state your name and present you case. He said Mr. and Mrs. Smith, before we get start started, I would like to point out to you that we have one (1) member of the ZBA who was not able to attend due to a death in his family. He said we have three (3) ZBA members in person and one (1) member who is virtual. He explained that you have the option to proceed with the four (4) member or to wait until all five (5) are hopefully present. He said I say that this because you need three (3) favorable to have you petition approved.

Jimmy Smith replied we wish to proceed.

Chairman Brown responded please present your case.

Jimmy Smith said yes sir, back in 2017 when we had the pool installed, the same company that built the pool, laid the slab. I was of the understanding that we had the all the necessary permits. In 2017 when the pool was installed by Southern Pools, the slab was laid at the same time.

Chanelle Blaine asked do you have anything else to say sir?

Jimmy Smith replied we were under the impression that all of the codes were correct and all the permits were obtained.

Gloria Smith said we already got a permit for the setback as far as the building is concerned and that's what I think we are actually here for.

Chanelle Blaine asked the Smith's if they wouldn't mind can you give the Board an idea of how all this came into being and what you are requesting.

Jimmy Smith said this came into being because we are building a garage and the setbacks should have been 20 feet and we only have 15 feet, so we are asking for a variance for additional space. He added we have notarized letter from the neighbor saying it was okay, which has already been submitted.

Chairman Brown asked how much of the construction has been completed.

Jimmy Smith replied 75 percent, so we asking to be allowed to continue the construction.

Chairman Brown asked is there anyone else in the audience that would like to speak in support of this petition? Hearing none, we asked is anyone who would like to speak in opposition to the petition. Hearing none in support or opposition, I will now turn this item to the ZBA members for comments and discussion.

Bill Beckwith asked is the request to reduce the side yard setback from 20 feet to 5 feet, is that correct?

Chanelle Blaine replied that is correct, Bill.

Marsha Hopkins said I guess I would like to hear a little more about the land and the septic tanks, and there being a drop-off, because what we look at is why it can't be placed somewhere on the property within the setbacks. She added I am not sure I have a complete picture of what that is and why that can't be done so, if someone could just explain why without any doubt it can't be put somewhere else. She explained that is one (1) of the factors that may prevent it being within the setback in another part of the yard, so please tell us about that

Darryl Williams said one (1) of the inspectors came out to survey the septic tank area and tested the soil, and since the field lines will be going vertical toward the pool; the inspector said everything would be fine, that should be in the reports. He stated that's how we were going to deal with the septic tanks on the left side of the building.

Marsha Hopkins asked are there any other unusual features about the property that make it such that it couldn't be placed with the setbacks?

Darryl Williams replied since they poured the slab, they told us that they had everything organized and that would be the ideal place for it and we said okay and the drop off would not be a problem. He explained I came on the scene and advised them we need to stop to get everything permitted, so that is how things came about because I found out it wasn't ready to be built because it wasn't permitted.

Chairman Brown asked so is that's when you stopped.

Darryl Williams replied yes, I was under the impression that all the paperwork was done since they were building the pool and pouring the slab because the concept was to build the garage with storage right next to the pool.

Chairman Brown asked what size building is it?

Darryl Williams replied about 700 square feet storage and the garage. He added they (Building Safety Department) asked to provide building plans and drawings which we gave to them and everything else that they asked for, we gave to them. He said we just want to proceed with the building. He concluded that the inspector didn't come out, we called them. He added they put a stop work on it which I knew would happen, but then we started asking questions about the correct procedure to make it right. He concluded that's what we have been trying to do, make it right.

Bill Beckwith said I took a look at that building, this is a two (2) story building, correct? He added that it seems that the bottom level is for antique cars and the top level is for living space.

Darryl Williams replied yes sir, and a storage space.

Darryl Williams replied I was told that we can have up to 700 square foot of living space.

Bill Beckwith which the maximum normally for a pool house.

Chanelle Blaine said that the 700 square foot number is for a guest house not a pool house.

Chairman Brown asked were you not aware that you should get a permit before you started construction?

Jimmy Smith replied we were under the impression when they installed the pool and poured the slab, they said all the permits had been obtained.

Chairman Brown asked did you think the permit for the pool was the approval to do the garage also?

Gloria Smith said I thought it was because I had gotten someone to proceed forward with it and that's when Darryl came along and told us the actual procedures to go forward.

Jimmy Smith responded also I was actually on-the-road at the time when this was being performed, so I wasn't there.

Chairman Brown said I saw in application where it said you were out of town.

Chairman Brown asked does anyone else have any questions?

Marsha Hopkins asked does your subdivision have a homeowners association?

Gloria Brown replied no we do not.

Bill Beckwith said Chanelle I was wondering if the records about that permit show when the permit was filed, who filed it and who approved the location of the building. He added I am hearing that

whoever the company that built the pool, they just poured a slab and it seems like they are the ones responsible for this without the homeowner knowing the paper trail of all permits that were supposed to be pulled.

Chanelle Blaine responded Bill, I don't have a copy of the pool permit, nor do I have the site plan in front of me to see if they put a pad on their site plan for the pool. She added I usually review the site plans for the pools and if I see a violation, I tell them that they need to get a variance or it needs to be removed before they can proceed with their pool permit. She stated since I review the pool permits, if I would have seen this violation, it would have come in much earlier for the slab.

Bill Beckwith said it looks like the pool company went ahead and did something and told the owners that everything was okay.

Chanelle Blaine replied that's what it sounds like to me.

Chairman Brown asked do you have a permit for the pool?

Gloria Smith replied yes we do.

Chairman Brown asked Chanelle, you didn't see it?

Chanelle Blaine responded I didn't look for it, I didn't think the pool was a part of this variance because they didn't mention the pool in their write-up. He added if they had mentioned it maybe I would have done the research for the pool permit.

Jimmy Smith replied was done in 2016 or 2017.

Bill Beckwith asked is that when the pad was poured?

Chanelle Blaine asked Ms. Smith is that when the pad was done when the pool was done?

Gloria Smith replied exactly.

Bill Beckwith is three (3) or four (4) years later is when the building was burned.

Gloria Smith responded yes.

Bill Beckwith asked you relied on the pool company who said they had permits to go ahead and build that building?

Gloria Smith replied yes, I was under the assumption that everything was okay.

Chairman Brown asked are there any other comments or questions, I will accept a motion.

Chanelle Blaine replied within 30 days they will have to have that building demolished because I don't think it can be removed out of the setback because it is on a foundation.

Marsha Hopkins asked when you say building, is the slab or is garage already there, that is what I am not clear about.

Chanelle Blaine explained the garage is almost built, they are saying is almost 75 percent built. She added so if you guys deny it tonight, within 30 days they will have to have that building demolished, since they are not able to move it out of the setback. She said that is there only way to fix it.

Bill Beckwith asked I wonder if it appropriate to table this tonight and allow for some research into the permits the pool company or anyone else that was issued to build that building. He added this is a very tough situation but there may be some paperwork that would rectify the situation, I don't think we have enough information to make a decision tonight. He asked Therol, does that sound like a reasonable request?

Chanelle Blaine said you guys can be table it, if you want me to do more research to look for the pool permit to see if they put the slab on there.

Chairman Brown said my position, on one (1) hand, they did not seek a permit for the building itself, but I sympathize with them that the pool company gave them the wrong advice. He added I hate to ask anybody to demolish a building that is already under construction. He stated by the same token, it is strictly out of compliance with code. I wish there was some middle ground or some way to rectify the situation. He asked what has been so far, I know you have a pad for the building? He added is it already studded- up and the outside is done, is it dried-in?

Gloria Brown replied yes, everything.

Darryl Williams said the roof is on, everything is done except the wiring has not been pulled yet?

Chanelle Blaine said are you saying you got a letter from the neighbor stating that they are okay for the placement of the garage. She added the neighbor does not object. She said I don't have a letter on file that says that. She asked did you submit the letter to the office?

Gloria Smith stated that is emailed to Stephanie Wagner.

Chanelle Blaine replied okay, it was not placed into the file, so I do not have a copy of the letter in the file.

Bill Beckwith said Mr. Chairman it seems to me there are a couple of very important documents are not available tonight, so I think it might be a better idea to table this once we have better information since this is such a critical decision we have to make, so I think we need more information.

Chairman Brown said Mr. and Mrs. Smith, what Bill is recommending that we table the issue. He added which means that we don't approve it nor do we disapprove it. He said let Chanelle meet with you and get all the letters and documentation in and we will revisit this petition next month.

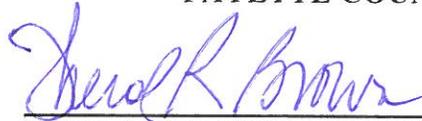
***Bill Beckwith made a motion to table Petition A-758-21 until the May 24th meeting. Marsha Hopkins seconded the motion. The motion passed 4-0.***

-----  
Chairman Brown said if there is no further items on the agenda, I will entertain motion to adjourn.

Marsha Hopkins made a motion to adjourn. Tom Waller seconded the motion. The motion passed 4-0. John Tate was absent.

The meeting adjourned at 8:42 pm.

ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY



\_\_\_\_\_  
THEROL BROWN, CHAIRMAN

  
\_\_\_\_\_  
HOWARD L. JOHNSON, ZBA SECRETARY