

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on May 24, 2021, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Therol Brown, Chairman
John Tate, Vice-Chair
Bill Beckwith (Virtual)
Tom Waller
Marsha Hopkins

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

1. Consideration of the Minutes of the Meeting held on April 26, 2021.

Tom Waller made a motion to table the minutes of the meeting held on April 26, 2021. Marsha Hopkins seconded the motion. The motion passed 4-0.

PUBLIC HEARING

2. **Petition No. A-753-21, Angela Culver, Owner, requests the following: Variance to Sec. 110-125. A-R, (d) (4) (b), to reduce the front yard setback (Old Greenville Road) from 75 feet to 25 feet to allow a barn to remain. The subject property is located in Land Lot 135 of the 4th District and fronts on Brooks Woolsey Road and Old Greenville Road.**

Richard "Rick" Lindsey started that he is an attorney located in Peachtree City (200 West Park Court, Suite 280, Peachtree City) representing Ms. Culver. He added this is a request for a variance to reduce the front setback which is actually the side of the property along Old Greenville Road from 75 feet to 25 feet. He explained that Ms. Culver bought the property back in December 2020, approximately five (5) months ago. He said the barn was already there and she has no idea that there was a setback issue until she went to apply for a permit to have a pool built in her yard. He noted that during the pool inspection, it was observed that the barn was located too close to Old Greenville Road. He stated that we don't know when the barn was built, we assume it was built about the same time as the house which was 1988 to 1990 since the barn and the house look very similar in architectural style and construction. He said the County has records of the permits which was pulled for the house but a permit for the barn cannot be found. He added we assumed the permits were pulled because all the work was done about the same time, but we are not certain.

Rick Lindsey also explained in doing the research of what happened on this property, it is somewhat interesting. He explained this portion of Old Greenville Road originated from a private easement that a previous owner had granted to their rear neighbor so they would have access to Brooks-Woolsey Road. He noted neither he, nor the County can find any records of where Old Greenville Road was ever dedicated, given or transferred to the County. He stated if it is just an easement and that is what the recorded documents say, no variance is needed; if on the other

hand, it is a County right-of-way, we do need the variance. He noted we are here out of an overbearance of caution seeking a variance for this barn that has appears to have been there 30 years ago.

Rick Lindsey continued nothing was done to it by Ms. Culver, she had no idea that there was an issue. He explained again, the barn has been there for a long, long time and to our knowledge there has never been a complaint lodged by any neighbor. He added it is buffered or shielded by some pretty heavy vegetation and you can see the barn from Old Greenville Road but it broken up with natural vegetation and the layout of the property is setup for a house farm with a riding circle. He noted to move the barn will be one(1) very expensive and two (2) it would mess up the entire site. He concluded for all of those reasons we are asking that the variance be granted from 75 feet to 25 feet just in case it is ever needed.

Chairman Brown asked Chanelle, did we check to see if it is a public road or an easement?

Chanelle Blaine responded that Pete Frisina said that the County Engineer recognized it as a County local road.

Rick Lindsey replied there is no way to know, but the County has the right of condemnation but at this point there is no record of it but we are here to say let's just leave the barn where it is.

Chairman Brown asked is anyone else in the audience who wants to speak in support of this petition. Being none, he asked if there is anyone else to speak in opposition of this petition. He then announced that the phone lines will be open for a minute for anyone to call-in their support or opposition.

Chairman Brown asked if any of the ZBA members have any questions or comments.

Tom Waller asked if it the structure has been identified on the property tax records?

Rick Lindsey replied as far as I know the property has been appraised and assessed.

John Tate responded this is a situation where the owner came into and it is not something created by the owner, so I really don't have a problem with it.

John Tate made a motion to recommend approval of Petition A-753-21 to reduce the front yard setback (Old Greenville Road) from 75 feet to 25 feet to allow an existing barn to remain. Marsha Hopkins seconded the motion. The motion passed 5-0.

3. 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 5th District and fronts on Camelot Drive.

Cymona West introduced herself and she said was representing the Smith family for the variance to keep the garage that is now currently under construction. She added we are here to request that the existing structure be allowed to stay. She said we have reached out to the neighbors who live around the home and we have notarized statements saying that they have no problem with the existing structure. She concluded there is nowhere else for the structure to be moved if we were to remove it.

Chairman Brown announced last month we voted to table this petition so that we could do further research to determine whether or not a permit had been approved by the County to add a structure to the side of the pool. He said the staff looked at the permit for the pool but the engineering drawing for the pool did not incorporate the structure that is in question tonight. He announced it was strictly for the pool and concrete around the pool. He noted there were also some questions of whether or not the pool company took it on themselves to give the authority to place the structure where it is. He clarified that after checking with the pool company they said there only concern was with the pool itself and the concrete around the pool.

Chairman Brown said although I respect your statement that you checked with the neighbors, the staff also received a letter stating that some the neighbors do object to the structure. He asked Chanelle, is that part of the record?

Chanelle Blaine said we received an email on Friday May 21st at 4:50 pm that says,

To the Board,

We would like to express our discontent and objection to the structure / building that is located at the property for which the variance is sought. 1) It should recognized that the structure of that size and visibility in not in keeping of the community's aesthetic and would set the wrong precedent, if allowed. 2) The most notable displeasure and objection is that many believe the building is used for a commercial trucking company business. Some are concerned about was is stored in the trucks and what it will possibly bring in the neighborhood if it is definitely indeed business usage and valuables are stored there. Also what the size of the truck does to the streets and the noise generated from the trucks coming in and out. We do not believe that this has not been put forth to the Board that is the intended storage and that's why the building is so very large. Again, its location and visibility makes it highly undesirable. Hopefully, the Board can ascertain all of the facts and make a decision understanding that what they decide will have lasting effects. Thank you for your consideration of our objections.

Ms. Susan James

Chairman Brown asked if there was someone in the audience that would like to speak in

support of this petition.

Jimmy Smith said I am the owner of house and the owner of the trucking business. He added there is no trucking business coming out of 420 Camelot Drive. He added the address of Jay Bar Trucking, Inc. is based out of 110 Hill Street, Shadydale, Georgia and that's where we operate from and my MC number is 1005712. He said when the neighbors saw the truck, we were dropping off some material, but the truck is not stationed there and it does not pull out of my home on Camelot Drive. He emphasized that I have more respect for neighbors and myself so I will not turn my home that I have invested in deeply into a trucking company. He said I have other places that I can park my truck, if I didn't have a permanent place I would park it a truck parking lot. He clarified that my truck is not rolling out of 420 Camelot Drive.

Chairman Brown asked is there anyone else that wishes to speak in support of this petition. Being none, he asked if there was anyone else to speak in opposition.

Rebecca Pierce (450 Camelot Drive, Fayetteville) said Mr. Smith's building does not do anything to my property as far as I am concerned and it is not in conflict with me since I am several houses down. She added my only concern is that if this approved, I am not fighting the approval, does it open the up the possibility or does it give me the right to go out and build a structure that I may want someone to live in, to rent or do anything. She said I understand that they do have a beauty shop or maybe I don't know. She noted I don't see traffic coming and going and I have never seen trucks pulling in and out. She concluded we are just worried more about what it will allow other neighbors to do, that was our only concern.

Mary Jones (145 Camelot Drive, Fayetteville) said my concern with this structure that is two (2) stories with at least three (3) garages bays and it is almost as tall as their house if you have not seen it. She stated my question is, did they get a building permit to have that size structure in a residential area? She said I have seen big trucks in the driveway, I haven't seen them come in but there have been trucks in that driveway. She added that is my issue, thank you very much.

Chairman Brown announced that the phone lines will be open for a minute for anyone to call-in their support of opposition. Hearing no call-in comments he asked if any of the ZBA members have any questions or comments.

Marsha Hopkins asked Chanelle can you clarify if the slab was encroaching or garage itself was encroaching into the setback.

Chanelle Blaine replied yes, the garage is encroaching as well.

Bill Beckwith asked are there any commercial activities allowed in a residential zone?

Chanelle Blaine responded a trucking business is not allowed in an R-70 zone, but we do allow for home-based businesses such as an office in your home and it has to be inside the primary residence, not in a detached structure.

Bill Beckwith said okay, that was the point I wanted to make.

John Tate said I am not quite clear on the size of the slab and whether or not it is simply a slab or whether there is a structure already there.

Cymona West replied there is both, the slab was poured when the pool was installed. She said from my understanding everything was permitted at that time. She added then the structure came at a later date, this year.

Chairman Brown announced that I wanted clarify a couple of items. He announced that John Tate due to a death in his family was not here last month when we discussed this. He said I apologize to John Tate and he explained that the building was under construction and already dried-in, but there was no permit issued so a stop work order was put in place, is that right Chanelle?

Chanelle Blaine responded I found out that concrete was poured after the pool permit was done, but it was not part of the pool permit, according to the pool installer. She added this all came into being once a stop work order was given by a building official, it was sent to me and then a variance was applied for. She concluded a building permit was not pulled for this particular garage.

John Tate asked what is the size?

Cymona West responded I don't have the measurements but I do have some photos for you to see.

Chanelle Blaine announced for the record you are allowed to have a detached structure of a maximum of 1800 square feet in this particular zoning district and we do not count the upstairs as part of the square footage, we only count the footprint. She added unless it is a guesthouse upstairs then we count that area.

John Tate asked isn't there something about whether or not you have steps inside a structure such as this you have to have pull steps.

Chanelle Blaine replied we took that out of the ordinance.

Bill Beckwith asked I wanted to clarify whether a building permit was issued for this structure. I thought I heard someone say it was not.

Chanelle Blaine responded there was no build permit pulled for this structure.

Bill Beckwith asked it was built without a building permit?

Chanelle Blaine replied that is correct.

Jimmy Smith said regarding the garage space, it is not for storing equipment or work for the

trucking company since the truck is not there. He explained we have three (3) car garage because as a disabled vet, I started a hobby of restoring old cars, but it is not for storing building materials. He emphasized I would not disrespect my neighborhood and running a trucking company out of 420 Camelot Drive. He said I have more respect for my neighbors and the property that I invested in myself than to turn it into a trucking company.

Chairman Brown said to be honest with you Mr. Smith, it not the ZBA's concern tonight what the building will be used for. He added frankly, that will be up to the zoning office when you apply for a permit. He clarified we are here to consider your variance and your variance only.

Mary Jones said I would like the panel to know that would in no way I like to see that Mr. Smith have to remove his building. She explained we really want to ensure that nothing commercial is going in the neighborhood. She added we welcome our new neighbor and we don't want to be the cause of any financial problems for him as long as he guarantees there is nothing coming other than for this personal his use. She said thank you for your time.

Marsha Hopkins said I just wanted to point out as you can tell we have a lot of concerns and questions going back and forth. She added I think ultimately in my mind is this the only location the garage can be placed in and from your application materials the suggestion is that the septic tanks and the fill lines obstruct any alternate locations.

Cymona West responded yes on the other side of the home and also there is a top off in the rear so there will nowhere else to situate it.

Chairman Brown said if there are no additional questions or comments, I will entertain a motion.

Bill Beckwith asked if this is disapproved, I believed that Mr. Smith would have a certain length of time to have this structure removed. He asked Chanelle, could a building permit be approved if a variance were approved, in other words if we approved a variance tonight could we get a building permit for the structure.

Chanelle Blaine replied if the variance was approved tonight, then they would apply for a building permit for the structure. She added if they were denied according to the ordinance they would have thirty (30) days to remove it out of the setback and they can also ask for an extension of a maximum of sixty (60) days to move it out of the setback.

Chairman Brown said hearing no motion, the petition is denied due to a lack of a motion, is that right Chanelle.

Chanelle Blaine said no. I think you still have to make a motion to deny.

Gloria Smith said that one (1) of my neighbors has offered to sell some of their property if we have an issue with the setback line.

Chairman Brown said that opens up some possibilities.

Chanelle Blaine replied if that is the case they will have to do a revision to the Final Plat of Beverly Manor. She added you may want to withdraw your case if that is the route that you are going to go.

Cymona West replied I believe that option will be contingent upon the decision tonight. She asked is that not an option? She added if you all say no to the variance tonight, would it not be possible to purchase the land from the neighbor.

Chanelle Blaine replied I will have meet with my director to see if that really is a probability, I will have to talk with him. She added you still will be within that 60 day countdown.

Cymona West responded if it is denied tonight, I should request the extension, then try to get all of that done within a 60 day period.

Chanelle Blaine replied yes. She added Therol, what I said is that if you guys deny the petition tonight, they still have 60 days if they want to buy the land from their neighbor to make it so that the garage is not encroaching into the setback.

Chairman Brown asked Chanelle, what if we tabled this again?

Chanelle Blaine responded you can't table it twice, you can only table it once.

Chairman Brown said okay here is the situation, we have to act on it now, either up or down. He added if we deny it, they will explore getting additional land from your neighbor. He asked Chanelle, if that occurs, do they then apply for a building permit.

Chanelle Blaine responded no, the first thing they will have to do is a revise the Minor Plat to show that they are adding property to their property from their neighbor and then they would apply for a building permit.

Bill Beckwith asked if we don't have a motion to approve and we make a motion to deny. they would have how many days?

Chanelle Blaine replied first you have to make a motion to deny it. then you have to make a motion to do the extension with the amount of days that you have to rectify the variance.

Bill Beckwith made a motion to deny Petition No. A-758-21 to reduce the side yard setback from 20 feet to 5 feet for an existing garage under construction. Tom Waller seconded the motion. The motion passed 5-0.

Chairman Brown then asked do we need a motion for an extension?

Chanelle Blaine said yes, you need to make a motion to extend the amount of time they have to correct the encroachment of the setback.

Bill Beckwith made a motion to extend the amount of time to correct the encroachment from 30 days to 60 days. John Tate seconded the motion. The motion passed 5-0.

Chanelle Blaine said we will be in touch with you on tomorrow to see if the Minor Plat Revision is an avenue you can take, thank you.

4. Petition No. A-759-21, Harold & Helena DeRienzo, Owners, request the following:

- 1) Variance to Section 110-136. R-45 (d) (4) (2), to reduce the front yard setback from (the existing plat) 80 feet (Banks Road) to 12 feet to allow an existing shed to remain.**
- 2) Variance to Section 110-136. R-45 (d) (4) (2), to reduce the front yard setback from (the existing plat) from 80 feet (Banks Road) to 44 feet to allow an existing playground to remain.**

The subject property is located in Land Lot 151 of the 5th District and fronts on Sugarland Trail, Banks Road, and Highway 54 East.

Harold DeRienzo said good evening, we applied for a building permit and in the process of applying for the permit we took pictures down to the planning department and they said you have a playground and a shed that is too close to the road, according to the zoning resolution or the plat. He added that we were unaware of that since we are about 200 feet from what I consider is our front yard line but Howard Johnson explained to us that we have three (3) front yards.

Harold DeRienzo said we front on Highway 54, which is now an elevated four (4) lane highway and also on Banks Road which was also expanded. He noted essentially we have three (3) front yards. He explained the shed is in violation about 14 feet from our property line and the children's playground is about 44 feet from our property line. He added the property line was changed when the property was acquired for the highway. He concluded we are asking for a variance for the playground and the shed.

Harold DeRienzo continued to give you a picture of this well-travelled road, along the Highway 54 side, the highway was raised approximately ten (10) feet. He added we have a six (6) foot fence and there maybe visually two (2) feet of road from the top of our fence. He said from the other side of Highway 54 nobody can see what's across the highway. He continued on the Banks Road side there are just woods, so in terms of aesthetics, I don't think there is an aesthetic issue. He noted there is a technical issue, since now I know we have three (3) front yards but we are about 200 feet from the cul-de-sac, but I guess 14 feet and 44 feet on the other ones.

Chairman Brown said you have three (3) frontages, but the variance is required because of the

County ordinance, it is not a road issue. He added is there anything else?

Harold DiRienzo said also we have two (2) leach fields from our septic and where we put the playground and the shed is ideal because of where are leach fields are.

Chairman Brown asked is there anyone in the audience that would like to speak in support of this petition. Being none, he asked is there anyone that would like to speak in opposition of this petition. He added if not we will open the phone line for comments. He announced that the phone is 770-305-5277.

Chairman Brown asked are there any comments or questions?

John Tate asked was the playground and the shed an issue before the reconstruction of Highway 54 and Banks Road.

Harold DeRienzo responded maybe the staff can give a better answer but from what I understand, it still could be an issue because I think the County requires an 80 foot setback. He added the playground may have gotten in but the shed surely would probably need a variance, since it is only 14 feet from our property line.

Chanelle Blaine said what he said is correct, those two (2) structures are encroaching the setbacks, they have very large setbacks on this property because they abut a major thoroughfare. She added if he didn't have come in we would not have known, but because he came in, we have to correct it.

Chairman Brown said my question may have been similar to John's, when was the playground and the shed put it?

Harold DeRienzo replied during the first year of Covid, we put the playground in because the kids were going remote learning.

Chairman Brown asked are there any other questions or comments from the other members? He added if not I will entertain a motion.

Chanelle Blaine said each variance should be voted on separately.

Chairman Brown said Mr. Derienzo, on this sheet showing the playground equipment and the shed, it doesn't depict where they are in relation to the house.

Harold DeRienzo responded I have a plat drawing when I visited the planning department.

Chairman Brown said okay, now I see the shed.

Harold DeRienzo replied the playground is a circle.

Chairman Brown comment I know you will have to dismantle the playground, but it is moveable. He added the shed is also moveable, so we are trying to look at options that might be available to you rather than violate the ordinance. He asked let's assume for minute that you are willing to move them, would you have room to place them.

Harold DeRienzo replied not without talking to your staff about the placement because we are on a corner lot. He added we got Highway 54 on the side and Banks Road on the other side and the Smokemont cul-de-sac on the other side. He said you are right, the playground is all wood and bolts construction. He noted there is also a slope on the property and the flattest part is where the shed and the playground are. He said I may have to sell the playground but I think the shed may be moved inward and I don't think that would damage the leach fields. He concluded I guess they could use a tractor with forks to lift it into the new location, that wouldn't be a hardship but I am not sure the playground will still be within conformance with the requirements.

Chairman Brown asked Chanelle, do you see why I am asking, if you move them, would you have room to meet the setback requirements, I am not sure he would.

Chanelle Blaine responded I am looking at his drawing and just where he has the playground, if he were to move to it 80 feet or 82 feet backwards it is near the septic system and we don't allow structures to be built on top of drain field lines, I know Environmental Health would not allow that.

Harold DeRienzo asked I know the ordinance is always the default position so you have to have somewhere to start from but what is the basis for the concern? He asked is it an aesthetic concern or a safety concern?

Chairman Brown said without sounding rude and I mean this respectfully, I don't know, maybe Bill Beckwith does, since he used to serve on the Planning Commission. He added the County Planning Commission and the Board of Commissioners adopts those ordinances, we don't adopt them and we don't always know the reasoning behind those ordinances.

Chanelle Blaine said the setback is mostly for the safety issues but since there is a major thoroughfare along Highway 54 and Bankstown Road explains the reasons why they are so large.

Harold DeRienzo said we did talk to the County about that and they agreed and put a berm in. He noted from Highway 54 where the roadbed, is it goes down and then they built a berm for us because we were concerned about safety as well, so if anything goes down there, it gets stuck in the berm.

Chairman Brown said that is a safety and a drainage issue there. I know where you are talking about.

Harold DeRienzo replied yes, that is correct.

Chairman Brown said unless there are any other comments or question, I will entertain a motion.

Marsha Hopkins made a motion to recommend approval of Variance #1 of Petition A-759-21 to reduce the front yard setback from 80 feet (Banks Road) to 12 feet to allow an existing shed to remain. Tom Waller seconded the motion. The motion passed 5-0.

Chairman Brown said I will entertain a motion for the second variance.

Tom Waller made a motion to recommend approval of Variance #2 of Petition A-759-21 to reduce the front yard setback from 80 feet (Banks Road) to 44 feet to allow an existing playground to remain. John Tate seconded the motion. The motion passed 5-0.

5. Petition No. A-760-21, Cole & Kristen Crowe, Owners, and Randy Crowe, Crowe & Jones Realty, Agent, request the following:

- 1. Variance to Section 110-125. A-R (d) (6), to reduce the side yard setback from 50 feet to 34 feet to allow a wooden storage shed to remain.**
- 2. Variance to Section 110-125. A-R (d) (6), to reduce the side yard setback from 50 feet to 9 feet to allow a concrete block building to remain.**
- 3. Variance to Section 110-125. A-R (d) (6), to reduce the side yard setback from 50 feet to 12 feet to allow a concrete pad to remain.**

The subject property is located in Land Lot 6 of the 5th District and fronts on Mask Road.

Cole Crowe (120 Mask Road, Fayetteville) said I am asking for a variance a storage shed, a concrete block building and a concrete pad. He added the storage shed and the concrete block building were there when we purchased the home in November 2020 so I do not know when they were built or if there was a permit pulled for them. He explained the pad was an accident, I did not know that I needed a permit and I didn't know the setback rules, but I had already poured the slab when I received a stop-work order. He said I met with Chanelle to apply for a permit to change location for my new storage shed. He concluded the third variance is to just to leave the slab there and have a new location for my storage building.

Chairman Brown asked is the third variance just to allow the slab to remain, are you going to build a structure on it?

Cole Crowe replied no. I am going to build in a totally new spot.

Chairman Brown asked if the wooden storage shed and the concrete block building was already there?

Cole Crowe replied yes, sir.

Chairman Brown asked how long have they been there?

Cole Crowe responded I don't know, but they are pretty old. He added the roof is torn up on the old concrete building.

Chairman Brown said I know where that is but I didn't get the chance to ride by recently. He asked is there anyone in the audience that would like to speak in support of this petition. Hearing none he asked is there anyone that would like to speak in opposition of this petition.

Chairman Brown announced that we will open up the phone lines for one (1) minute to see if anyone would like to comment.

Chairman Brown asked what size is the concrete pad?

Cole Crown replied is it a 24' x 24'.

Chairman Brown asked are there any questions or comments from members of the ZBA?

Chairman Brown announced that I will entertain a motion for all three (3) variances.

John Tate made a motion to approve Variance #1 of Petition A-760-21 to reduce the side yard setback from 50 feet to 34 feet to allow a wooden storage shed to remain. Tom Waller seconded the motion. The motion passed 5-0.

Marsha Hopkins made a motion to approve Variance #2 of Petition A-760-21 to reduce the side yard setback from 50 feet to 9 feet to allow a concrete block building to remain. Bill Beckwith seconded the motion. The motion passed 5-0.

Bill Beckwith made a motion to approve Variance #3 of Petition A-760-21 to reduce the side yard setback from 50 feet to 12 feet to allow a concrete pad to remain. Therol Brown seconded the motion. The motion failed 3-2.

Chairman Brown said Mr. Crowe I guess what that means is that you have tear up the pad and remove it otherwise you will be in violation. Chanelle correct me if I am wrong.

Chanelle Blaine asked would you like them to give you an extension on the amount of days it to remove the pad. or are you okay with 10 days?

Cole Crowe replied yes because nobody is going do it in 10 days. it's just how busy people are

Chanelle Blaine said can you make a motion to allow him the extension of 60 days to remove the pad.

Marsha Hopkins made a motion to extend the amount of time to demolish the concrete pad from 30 days to 60 days. John Tate seconded the motion. The motion passed 4-1.

Chanelle Blaine responded it is an extension of the 10 days to 60 days. He will have 60 days to remove the pad.

Bill Beckwith asked that is was for 60 days period, not 70 days?

Chanelle Blaine replied no, it is only for 60 days, which is the maximum.

6. Petition No. A-761-21, Denise Burke, Owner, and Brad Craven, Agent, request the following:

- 1. Variance to Sec. 125-79. A-R, (d) (4) (a) (1), to reduce the front yard setback from 100 feet to 49 feet to allow for the construction of a primary residence.**
- 2. Variance to Sec. 125-79. A-R, (d) (5), to reduce the rear yard setback from 75 feet to 22 feet to allow for the construction of a primary residence.**

The subject property is located in Land Lot 7 of the 6th District and fronts on Highway 74 South.

Denise Burke said she is the owner of the property and is asking to move the existing house which has been there since 1932 and it's uninhabitable. She added we want to put up a new structure, but we need to move it back. She noted since that property had been built, they have expanded Highway 74, so basically when you walk out the door, there is a huge ditch and the house is right on the road. She explained we are building it as a primary residence for my 75 year old mother so it will not be a rental. She said it actually improve the aesthetics of the street. She added I don't know if everyone has seen the little white house, but I do have pictures if you would like to see what we have there now and what we would like to build. She concluded we would really like to it move it back from the property.

Chairman Brown asked so are you going to rehab it?

Denise Burke responded oh you can't. She added I think it originally started as a one (1) room shack. She noted we were going to rehab it, because when you watch the DIY network and all those shows, you think how awesome it would be, but there is nothing worth saving in that house. She explained it would actually cost almost 200 thousand dollars to do it. She concluded I did go in with high hopes. She added I have pictures of what it looks likes now, if you would like.

Chairman Brown said I am familiar. I did go by there.

Denise Burke said the lot is not deep. it's long so we are just going to put in a 1700 square foot

ranch single-level. She added it is for my mother who is 75 years old and she has won the yard of the year four (4) times, so it will be beautiful.

Chairman Brown asked is there anyone in the audience that would like to speak in support of this petition. Being none, he asked is there anyone that would like to speak in opposition?

Donna Allen (1473 Highway 74 South) said that she and her husband own the property beside this particular lot. She added I am not sure if what I am speaking is an issue but throughout out the document there are a number of insurances of the size of this property.

Donna Allen noted the property per the plat is .794 acres, then there is a plat that was done on 3/25. She added on 3/25 S.A Gaskins and Associates also documented that this is .794 acre property. She noted if you look on the variance application to the Zoning Board of Appeals which was dated 4/15 says this 1.12 acres She said this document says that this a request for the building because of changes that any new building must have been on at least 5 acres, so I don't know what was appeal was requested. She noted that another document states that states the property is that is 1.12 acres. She said I am not sure that if the most recent recorded plat is the one that is in this packet that was dated 3/25.

Donna Allen said there are some questions I have, if on 4/15 you are saying it' is 1.2 acres but yet according to the plat that was done on 3/25 (showing her name), it clearly states that is .794 acres. She added there is also a limited warranty deed states 1.03 acres more or less. She stated that I worry about the fact there are inconsistencies. She explained I am also concerned on what parcel the builder is going to build and if they are going to encroach on my property. I think that is probably unlikely since there is a fence that is already there but the neighbor is more affected by this because is it just paddle fencing.

Donna Allen continued as far as the structural design, I think that Ms. Burke knows what it would look like but I have not had any correspondence from Ms. Burke about this. She said I don't know what the structural design would look like, my concern would be a two (2) story. She added I don't know what the plans are for that and this is this is my concern.

Chairman Brown said let me address a couple of points that you made. He added there is some discrepancy in the documents as to the acreage. He noted I don't know this for a fact but I would speculate that the warrant deed is based on the tract of land situated prior to widening to Highway 74 and that's where you are going to find the reduced acreage but I am not certain but that is what happened.

Chairman Brown said let me point out something. He added whether is it one acre (1) or $\frac{3}{4}$ acre is doesn't matter her tonight, it is a legally non-conforming lot. He explained our issue here is the setback requirements, not whether is one (1) acre or a half-acre. He added it doesn't matter as far as our decision tonight what the size is. He noted the engineering survey will speak for itself and the County will have to dig into that. He said you are quite prudent to ask questions. because it is a discrepancy. no doubt about it. He asked Chanelle. based on the current zoning an A-R lot will

have to be five (5) acres, is that correct?

Chanelle Blaine replied that is correct.

Chairman Brown said since this doesn't not contain five (5) acres that is why it is non-conforming.

Donna Allen said that was the only thing, but again I have not seen anything what this would like to be able to say what I am fine with that or not.

Chairman Brown said if Ms. Burke wants to share here concept or drawing with you or anybody else that is fine, but that is not a requirement. She doesn't have to tell you or anybody else what she is going to build.

Donna Allen responded if she wanted to build a two (2) story, I would be against that.

Denise Burke said I have no intention on building a two (2) story home. She added my mother is 75 years old so it only going to be a 1700 square foot house. She noted this is what we are planning on building but it only going to go 22 feet. She continued as far as the acreage, you are correct, I pulled up the GIS and I looked on my tax form, so it was prior to when they took right-of-way away. She explained that is the only reason it is a discrepancy, it wasn't meant to be deceitful or anything like that. She said to be honest with you, I have no idea. She noted that this is a non-conforming lot so all I want to do is go 22 feet back from the property line so my mother doesn't fall into the ditch when she walks outside her front door. She concluded I want to pull it a little bit back, that all I want to do.

Chairman Brown asked is there anyone else that would like to speak in opposition.

Amin Virani (1521 Highway 74) said I live on the property behind that house and if I am not wrong that are coming out 22 feet from 75 feet on the rear yard setback. Is that correct?

Chanelle Blaine replied that is correct.

Amin Virani said I have live cattle, horses and other animals. He added in the future, I think there are going to be problems since they are going to build a house so close to my property. He said I can have horses on the nearby property which is A-R zoning.

Chanelle Blaine replied yes they are both zoned A-R.

Amin Virani replied I am in opposition to the house coming so close to my property line. instead of 75 feet only 22 feet. He said in the future. since her mother is 75 years old. she will have a problem if the horses make noise at night or sometimes in the during since she is so close to the horse pasture. thank you

Chairman Brown announced that we will open up the phone lines for one (1) minute to see if anyone would like to comment.

Chairman Brown asked are there any questions or comments from members of the ZBA?

Tom Waller asked is there a garage included in the proposed house?

Denise Burke said it is an attached garage.

Amin Virani said the plat it says the lot is 124.48 feet long. He asked if you take 22 feet from the back and 49 feet from the front, how much room will they have to build the house and on the other end you have on 107 feet? He added if it going to be 22 feet and 49 feet, how much room is there going to be to build the house? He noted also the driveway enters directly from Highway 74.

Bill Beckwith said there is insufficient room to build a house. Ms. Burke doesn't have the room to build here.

Chairman Brown said I don't understand what you are saying sir.

Amin Virani said if you take 107.22 feet minus 49 feet is going to be 71 feet. He added 71 feet minus 107 feet is 40 feet. He added that's going to end-up on my property line.

Chairman Brown said one property line is deeper than the other. He added I guess the north property line is 14 feet deeper than the other one.

Bill Beckwith said Therol since there is a concern about that, I was wondering if Ms. Burke would comment on if the house plans she has will fit in the allocated space if we were to approve this variance.

Denise Burke responded it will fit in this space, the lot is not very deep, it's wide, the house is going to be wider, ranch-style house. She added it will be 22 feet off his pasture land, but the horses go in at night, so they are not going to be out at night. She noted the house is going to be 22 feet off the back side and it's going to be long, but not deep house, so yes it will fit on that property. She added it is not a very big house, I think it is maybe 1700 square feet. She concluded the current house is 900 square feet and it does sit right on Highway 74 and that's why we asked for the variance to come 22 feet on back side. She asked Chanelle, is the front setback 49 feet?

Chanelle Blaine replied yes the setback is 49 feet.

Denise Burke responded yes. so we are asking for it to be pushed back 49 feet on the front and to come off the back property line 22 feet.

Amin Virani responded the horses stay in the pasture at night unless the weather is bad. then they go inside.

Denise Burke said my mother is from Houston Texas so listening to horses at night would be so much better than the main street she currently lives on with police, fire trucks, and ambulances, so let me tell you that's not her concern.

Amin Virani responded it is a safety reason to because there is a lot of live cattle around there and 22 feet is not a much of a gap, thank you.

Chairman Brown asked are there any other questions, if not, I can entertain a motion on each of the variances separately.

Marsha Hopkins made a motion to recommend approval of Variance #1) of Petition A-761-21 to reduce the front yard setback from 100 feet to 49 feet to allow for the construction of a primary residence. Tom Waller seconded the motion. The motion passed 5-0.

Chairman Brown said I can entertain a motion on the second variance.

Marsha Hopkins made a motion to recommend approval of Variance #2) of Petition A-761-21 to reduce the rear yard setback from 75 feet to 22 feet to allow for the construction of a primary residence. John Tate seconded the motion. The motion passed 5-0.

7. **Petition No. A-762-21, Philip N. Foster, Owner, requests the following: Variance to Section 110-79. Residential accessory structures and their uses, (e) Residential accessory structures located in a front yard, to allow an existing shed to remain. The subject property is located in Land Lot 55 of the 5th District and fronts Hilo Road.**

Jeff Carson (110 Oak Court, Fayetteville) said good evening I am as the agent for Mr. Foster who lives at 390 Highland Road, who could not be here this evening. He added Mr. Foster applied for a building permit to build a porch onto his residence. He explained as a result of the review for the permit, the staff discovered that a garden shed in his front yard was a violation of the ordinance, so he is asking for variance to allow the garden shed to remain. He noted the garden shed is a 10' x 20' post beam type construction with a green metal roof shielded very well from Hilo Road with a stand of bamboo and other various trees. He concluded Mr. Foster has communicated with the nearest neighbor who has no objection to the garden shed remaining.

Chairman Brown asked was the primary residence built in 1980.

Jeff Carson replied I believe so. maybe 1979. I think.

Chairman Brown asked do you know if this property was taken from a bigger parcel?

Jeff Carson replied I do not know. He added I know the first plat I saw combined two (2) smaller parcels do make a three (3) acre parcel. which is what the parcel is now. but I don't the specific

answer to your question.

Chairman Brown asked is there anyone in the audience that would like to speak in support of this petition. Hearing none he asked is there anyone that would like to speak in opposition of this petition.

He added if not we will open the phone line for comments for one (1) minute. . He announced that the phone is 770-305-5277.

Chairman Brown asked are there any questions or comments from members of the ZBA?

John Tate asked when was the shed built on the property?

Jeff Carson replied about six (6) years ago.

John Tate asked do you know why it put in that location and is another location where it can fit?

Jeff Carson responded there is really not a location that is not in front yard due to the topography of the lot that is very hilly everywhere back of the house, so the front yard is really the only flat spot.

Chairman Brown asked did you say that even though it was in the front yard did you say it was block vegetation or trees?

Jeff Carson replied yes there is a good stand of bamboo and various other trees and you really can't see it from Hilo Road. He added it is an open shed it really doesn't have walls, so it is just posts. He said think of a miniature pole barn.

Chairman Brown asked unless are there any questions or comments from members of the ZBA, I will entertain a motion.

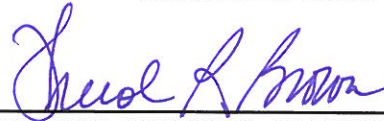
Tom Waller made a motion to recommend approval of Petition A-762-21 to allow a residential accessory structures located in a front yard, to remain. John Tate seconded the motion. The motion passed 5-0.

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. John Tate seconded the motion. The motion passed 5-0.

The meeting adjourned at 8:51 pm.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY



THEROL BROWN, CHAIRMAN



HOWARD L. JOHNSON, ZBA SECRETARY

