

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on October 25, 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
Tom Waller
Marsha Hopkins
Anita Davis

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

STAFF ABSENT: Pete Frisina, Director, Community Services

1. Consideration of the Minutes of the Meeting held on September 27, 2021.

Tom Waller made a motion to approve the minutes of the meeting held on September 27, 2021. John Tate seconded the motion. The motion passed 5-0.

PUBLIC HEARING

2. Petition No. A-777-21, Donell Harris, Owner, and Melvin Cooper/Diane Fudge, AHB General Contractors, Agent, request the following: Variance to Sec. 110-137. R-40 (d) (6), to reduce the side yard setback from 15 feet to 13 feet to allow an existing primary residence foundation to remain. The subject property is located in Land Lot 250 of the 13th District and fronts on GA Highway 279.

Chairman Brown asked the petitioner to please come forward and sign-in and to please state your name.

Diane Fudge (5092 Laurel Ridge Drive, Smyrna) said good evening, I am with AHB General Contractors. She stated there was an existing house at that location and I am not sure of the date that the original structure was completed, since we were not the original builders. She said that it is our understanding, at that time when the site plan was submitted the structure did not meet the setback requirements. She explained somehow it was overlooked on the approved site plan. She noted recently the house suffered some damage and were hired to build the structure back. She concluded we are seeking permission to use the existing foundation which means that we will not cut the foundation back, but use the existing foundation at 13 feet from the property line.

Chairman Brown asked is there anyone in the audience who would like to speak in support of this petition. Being none, he asked is there anyone who like to speak in opposition to this petition. He then asked if not, are there any questions or any comments from ZBA members.

Chairman Brown asked does the footprint include the two (2) or three (3) rows of concrete blocks along with the existing slab as part of the existing structure?

Diane Fudge said to be honest, I am not sure.

Chairman Brown asked do you know, Chanelle? He added I know the slabs are because you can look at it and tell.

Chanelle Blaine asked Therol can you explain what you are asking?

Chairman Brown said there is a foundation with nothing there except for the concrete blocks for the footing and the foundation. He asked is that part of the structure that burned, or is that new?

Chanelle Blaine replied that is all of the foundation that burned.

Chairman Brown said okay, I am surprised that it wasn't damaged more than the current physical appearance, that is why I asked.

Chairman Brown asked are there any concerns or questions from other ZBA members, if not, I will entertain a motion.

Chairman Brown stated that regardless of when the structure was originally built, it does make sense to use the existing footprint rather than shifting it. He added also I noticed you will have a gas line issue to deal with if you were to shift it to the east.

John Tate made a motion to approve Petition No. A-777-21 to reduce the side yard setback from 15 feet to 13 feet to allow an existing primary residence foundation to remain. Marsha Hopkins seconded the motion. The motion passed 5-0.

3. Petition No. A-778-21, Michael & Crystal Mehio, Owners, request the following:

1) Variance to Sec. 110-137. R-40 (d) (6), to reduce the side yard setback from 15 feet to 13 feet to allow an existing residential accessory structure to remain.

2) Variance to Sec. 110-79. Accessory structures and uses, (c) (1) (a), Number and size, to allow for the number of permitted residential accessory structures on the lot be raised from two (2) to five (5).

The subject property is located in Land Lot 226 of the 4th District and fronts on Busbin Road.

Crystal Mehio (262 Busbin Road, Fayetteville) said that the house was built in 1977 by the previous owners before we purchased it in 2011. She added six (6) of the structures were noted by

Code Enforcement who informed us that only two (2) are allowed. She noted the three (3) pre-existing sheds prior to our ownership; the two (2) awnings for our vehicles and our travel trailer and lastly a metal gazebo in our backyard which provides some shade. She explained that the County allows for two accessory structures with a combined total of 1800 square feet and that all of the accessory structures in the backyard are less than the 1800 square feet combined.

Crystal Mehio said we purchased the house as a foreclosure from the bank, and to begin work we pulled permits to begin renovations. She added we have drastically improved the property and brought everything up to code according to the County inspectors. She explained as part of the renovations, we painted the outside of the sheds to modernize their appearance to compliment the house. She said that throughout this year long process, the County inspectors were on our property on many occasions to inspect the house to make it sure it was up to code but these shed weren't at that time mentioned or reported to us by the County inspectors. She expressed these structures were grandfathered-in based our knowledge. She concluded the financial burden to tear these shed down after ten (10) years will be a hardship upon us.

Crystal Mehio continued that Code Enforcement was called to the house because of an anonymous report regarding the carport in front of the house. She added we were informed that it was too close to the property line, so we offered to take it down since someone complained about it. She added after a further inspection, it was reported that the other five (5) other accessory structures were in violation. She explained since we have no attic or garage and very small closets for our family of seven (7), we use the three (3) accessory structures for storage. She concluded the other two (2) structures are a gazebo, which provides shade from the sun and a RV awning which protects the travel trailer from the elements.

Crystal Mehio said in addition, most of our neighbors have compatible travel sheds, awnings and similar on their property as well as run businesses from their property. She noted none of these structures were not reported by any of our neighbors and some were pre-existing. She explained we have a great need for them because of the structure of the house, so we ask that you make an allowance for us, so that we don't have to destroy our beautiful back yard that we worked hard on to improve from its original state. She added we also have a letter signed by the closest neighbor adjacent to the storage sheds stating that we are not causing any interference to them. She concluded please allow us to keep the sheds since we don't have lot storage in our home. She said thank you for your time and consideration for this request.

Michael Mehio said that the house was built in 1977. He added that it is an older ranch house and the attic space is not large enough to place a furnace it, so we can't store anything in it. He noted there is no garage space so we have a great need to store our belongings for a seven (7) person household. He concluded we appreciate your consideration.

Chairman Brown asked is there anyone in the audience who would like to speak in support of this petition. Being none, he asked is there anyone who like to speak in opposition to this petition. He then asked if not, are there any questions or comments or questions from ZBA members.

Anita Davis asked what is the available square footage of the house?

Michael Mehio replied the house itself is about 3400 square feet.

Chairman Brown asked Chanelle, is it in the staff analysis?

Chanelle Blaine replied I will look it up.

Michael Mehio said it was a ranch house when purchased it as bank foreclosure and then we added a few rooms but still is a ranch house with low ceilings, small closets, minimum attic and storage space inside.

Chanelle Blaine responded the square footage is 3629 square feet.

Michelle Mehio said but there is no garage or basement.

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

Marsha Hopkins said that she wanted some clarification. She asked is what you added the carport, and the metal gazebo but the other structures were pre-existing.

Michael Mehio replied that is correct.

Anita Davis said there were six (6) structures in total, but there were three (3) when you moved in, she asked is that correct?

Micheal Mehio responded yes, pre-existing there were three (3).

Anita Davis asked so you added one (1) for your RVs and then one (1) for your cars, and the gazebo in the back?

Michael Mehio said the complaint was strictly for the carport in the front yard. He added when we became aware, we immediately decided we would take it down, since we didn't know that we shouldn't have it. He added we have a fence in the front so the sheds in the back are not noticeable from the street, surrounded by the house along with the trees. He noted along the backyard there are no neighbors and along the side we have a letter from the neighbor who has no complaints.

Chairman Brown replied I have seen that letter and I have visited the site.

Chairman Brown asked when pull into your driveway is that the carport that is immediately on your left?

Michelle Mehio responded yes, that is the one that we received the complaint about.

Chairman Brown said it looks to me that carport in front is the only additional structure that is very visible from the road and the remainder of your property is separated by trees. He asked have you have any complaints from any other neighbors regarding the others structures?

Michael Mehio replied we don't have neighbors in the back, just trees.

Chairman Brown said it my understanding that you are going to remove the carport. He asked Chanelle, how many days will they have to do that, if it approved?

Chanelle Blaine replied I think they said they were going to remove the carport on their own, so that's not really a part of the petition. She added if you disapprove the amount of structures they can have, they will have to remove it within 30 days but they can ask for the 60 day maximum.

Chairman Brown asked are they any other questions or comments from members of the ZBA. If not I will entertain a motion.

Marsha Hopkins made a motion to approve Variance #1) of Petition No. A-778-21 to reduce the side yard setback from 15 feet to 13 feet to allow an existing residence foundation to remain. Tom Waller seconded the motion. The motion passed 4-1.

Anita Davis made a motion to approve Variance #2) of Petition No. A-778-21 to allow the number of permitted residential accessory structures on the lot to be raised from two (2) to five (5). Therol Brown seconded the motion. The motion passed 3-2.

4. Petition No. A-779-21, David & Karly Vensel, Owners, request the following:

- 1) Variance to Section 110-125. A-R (d) (6) to reduce the west side yard setback from 50 feet to 35 feet to allow an existing garage to remain.**
- 2) Variance to Section 110-125. A-R (d) (6) to reduce the south side yard setback from 50 feet to 44 feet to allow an existing garage to remain.**

The subject property is located in Land Lot 193 of the 4th District and fronts on Carrolls Way and Darren Drive.

David Vensel (220 Carrolls Way, Fayetteville) said we are seeking a variance for an existing structure. He added we purchased the house in 2020 but there was no survey given to us when we bought the house. He noted when we looked for a survey or plat, nothing was recorded so we had a survey done. He explained that once the survey was completed, Howard Johnson informed us that we still needed to apply for a variance. I don't know exactly when it was built, but the house was built in 1982. He concluded we are looking to keep the original existing structure and we are hoping to not to have to take it down or take off the corners. He added we want to become

compliant.

Chairman Brown asked according to this, the house was built in 1982, is that correct?

David Vensel replied it is a log house, I believe it was built in 1982.

Chairman Brown asked is there anyone in the audience who would like to speak in support of this petition. Being none, he asked is there anyone who like to speak in opposition to this petition. He then asked if not, are there any questions or comments from ZBA members.

Anita Davis asked can you please describe this building, I thought it was a garage but here it indicates there is a sunroom, it this like an in-law suite or it a garage where you park vehicles?

David Vensel responded I think the previous owner tried to convert this into an in-law suite, so that's is why there is a sunroom attached to it.

Chairman Brown asked are there any additional comments or questions from other members of the ZBA.

John Tate made a motion to approve Variance #1) of Petition No. A-779-21 to reduce the west side yard setback from 50 feet to 35 feet to allow an existing garage to remain. Marsha Hopkins seconded the motion. The motion passed 5-0.

Marsha Hopkins made a motion to approve Variance #2) of Petition No. A-779-21 to reduce the south side yard setback from 50 feet to 44 feet to allow an existing garage to remain. John Tate seconded the motion. The motion passed 5-0.

5. Petition No. A-780-21, Sergio and Maria R. Padilla, Owners, request the following:

- 1) Variance to Section 110-125. A-R (d) (6) to reduce the side yard setback from 50 feet to 26 feet for the construction of a new single-family residential home.**
- 2) Variance to Section 110-77. Lot width. To reduce the front yard setback from 396 feet (that is established by the lot width) to 360 feet to allow the construction of a principal structure.**

The subject property is located in Land Lot 31 of the 5th District and fronts on Redwine Road.

Sergio and Maria Padilla (1473 Redwine Road) both said good evening. Sergio Padilla added that they purchased the property next door at 1469 Redwine Road which is almost 14 acres and we are seeking permission to build our new home there. He explained that he made a mistake of buying the floor plan of the home prior to looking at the land. He noted that the footprint of the proposed

home backs up too close towards the wetlands on the property. He said I am seeking a variance to move the house towards the front of the lot by 26 feet on one side and by 24 feet on the other side. He explained it if you allow us to build it there, it would help with a better flow for the septic tank and a better constructed basement. He added I would appreciate your consideration.

Chairman Brown asked is there anyone in the audience who would like to speak in support of this petition. Being none, he asked is there anyone who like to speak in opposition to this petition. He then asked if not, are there any questions or comments from ZBA members.

John Tate asked if the home was placed back at 396 foot build line, how far would it be from the flood zone.

Sergio Padilla replied it is not too close to the flood zone, but the main purpose is to get better flow for the septic system but the house is only one (1) story with a basement. He explained by placing the house at the build line, it will be in a ditch and you will only be able to see the roof from the street. He added so I want to bring it up a 26 feet toward the road.

John Tate asked where will you put the septic tank?

Sergio Padilla responded the septic tank is going to be on the side of the house which is a little up on a hill. He added if I build the house in the low area, I will have to use a pump or a different type of septic system.

Chairman Brown asked are you going to put the tank on the south side of the house and have a lift pump?

Sergio Padilla replied it will be placed on the north side of the house. He added if I build it down there (low area), I will have to use a pump.

Chairman Brown said I visited the site, are you going to demolish that home?

Sergio Padilla responded I have already demolished the home, which was a very small home. He added now the width of the new house is about 120 feet wide. He explained I did not realize that out of the 14 acres we only have about six acres (6) good acres, the remaining land is wet.

Chairman Brown asked when did you buy the house?

Sergio Padilla said I bought this house in 2015.

Tow Waller asked will you demolish the house before you put the next house up?

Sergio Padilla replied we have already demolished the house, the house is not there anymore.

Chairman Brown asked are there any other comments or questions from members of the ZBA. He

added if not I will entertain a motion.

Tom Waller made a motion to approve Variance #1) Petition No. A-780-21 to reduce the side yard setback from 50 feet to 26 feet to allow for the construction of a new single family home. Marsha Hopkins seconded the motion. The motion passed 4-1.

Marsha Hopkins made a motion to approve Variance #2) of Petition No. A-780-21 to reduce the front yard setback (established by the lot width) from 396 feet to 360 feet to allow for the construction of a new single family home. Anita Davis seconded the motion. The motion passed 5-0.

6. Petition No. A-781-21, Kimberly Menig Ross & Christopher James Ross, Owners, request the following:

- 1) Variance to Sec. 110-137. R-40 (d) (6), to reduce the side yard setback from 15 feet to five (5) feet to allow a chicken coop to remain.**
- 2) Variance to Sec. 110-89.5. Keeping of chickens in conjunction with residential use, to reduce the minimum setback of 50 feet from all property lines to five (5) feet to allow a chicken coop to remain.**
- 3) Variance to Sec. 110-79. Residential accessory structures and their uses. (c) Number and size, (1) (a), to increase the amount of residential accessory structures per individual lot from 2 to 3.**

The subject property is located in Land Lot 104 of the 5th District and fronts on South Jeff Davis Drive.

Kimberly Ross (100 Bonnie Lane. Fayetteville) said we are asking to keep the structures that were on the property when we purchased it in 2014. She added the first one (1) is a chicken coop in our side yard of our flag lot which is located in the very far back corner of the property. She noted also that we found out that we have three (3) accessory structures instead of two (2) structures. She added that we have a barn, a small shed and the coop. She concluded that we are just asking to keep those structures.

Chairman Brown asked is there anyone in the audience who would like to speak in support of this petition. Being none, he asked is there anyone who like to speak in opposition to this petition. He then asked if not, are there any questions or comments from ZBA members.

Kimberly Ross said if you take a look at the map, I believe my house was built in 1979, so the placement of the chicken coop from my understanding made sense back then, because it is at the farthest point from both neighbors even though the coop is quite close to the property line. She added I guess it was the thinking back then.

Chairman Brown asked if you turn off Jeff Davis onto Bonnie Lane, you are the first driveway on the left.

Kimberly Ross replied correct. She added a previous owner owned both tracts of land of 40 acres. She explained that he sold a 1.38 acre portion on Bonnie Lane to a developer, I believe in 1991, so they re-routed the driveway. She said from my understanding, I don't know if the driveway used to extend from South Jeff Davis or perhaps it meandered through that 1.3 acres. She noted that our address used to be 738 South Jeff Davis Drive. She explained that after 6 years of not getting my FedEx packages, I finally petitioned and now the County granted me a new address.

Chairman Brown asked when you pull in your driveway, there is a corrugated tin 12'x15' building, is that the chicken coop?

Kimberly Ross responded no, that is just a lean-to, it is just a small shed.

Chairman Brown asked where is the chicken coop?

Kimberly Ross replied it is all the way on the other side, where you can't see it. She added that is why no one is affected by its location. She noted the neighboring property seems to create a fence line there. The neighbor actually piles all of his pine wood in front of it because we all share the wood. So there is the wood pile, the fence line and the back of my chicken coop and that is all he can see.

Chairman Brown asked Chanelle can you refresh us on the poultry regulations, please.

Chanelle Blaine responded the ordinance says:

The number of chicken allowed per dwelling unit is limited to six (6) starting with base lot size of a one (1) acre, three (3) additional chickens are allow for each additional acre for a maximum of 12 chickens for the following zoning districts: EST, C-S, R-85, R-80, R-78, R-75, R-72, R-70, R-55, R-50, R-45, R-40, R-20, DR-15, RMF, MHP, PUD-PRD, PUD-PRL, PUD-PEF, O-I, C-C, C-H, L-C, M-1, M-2, and BTP. No roosters are allowed. Chicken houses and coops are allowed in the side and rear yards only and shall be sat back from all property lines a minimum of 50 feet. Chickens shall be contained on the lot. The containment area shall be in side and rear yards only and shall be limited to no more than 40 percent of the lot.

Chairman Brown asked what would be setback if you built it today?

Chanelle Blaine said it would be 50 feet if you built it today.

Kimberly Ross said if you are looking at the map, that small section in the corner is completely fenced in and it goes down to the lake. She added, technically if we have to tear it down, we would have to build it at 50 feet. She noted that the coop is not very large and the first section of it

is where we keep our tools, so it's more of a storage shed.

Anita Davis asked is it possible to move to build a coop that is compliant with the current rules.

Kimberly Ross replied because of the lay of the land it slopes down toward the pond, it would be difficult because we are currently building an addition and in the back of the property is our garden. She said logistically speaking, I don't think it will be done easily. She added that I am not going to say that it is impossible. She added we are not harming anyone, our neighbors love their fresh eggs.

Chairman Brown stated that is current neighbors, but what about you future neighbors.

Kimberly Ross responded well actually we are going to purchase the property in the front that abuts us, so eventually that will be our property. She added we are good friends with the neighbors.

Marsha Hopkins asked can you walk me through the three (3) structures, please.

Kimberly Ross replied there is a shed, a barn which is behind the house and honestly the barn will have to be torn down. It is a third structure but it may survive another five (5) years, and then a chicken coop. She explained the aerial kind of looks confusing, it looks like we have another structure but is actually a plastic greenhouse that you purchase for maybe 100 dollars, which the wind tore up and we discarded it anyway.

Tom Waller asked do you market the eggs from these chickens, do you give them away or do you sell them.

Kimberly Ross replied no. She added we eat most of the eggs and we trade with the neighbor across the pond who is an avid gardener, so we do a lot of trading.

Chairman Brown said we are obligated to try to look for ways to avoid violating our ordinances because they are in place for a reason. He added to my knowledge this is the first that we had like this since we adopted the chicken ordinance.

Chanelle Blaine said yes, this is the first variance we have had for the chicken ordinance was adopted.

Chairman Brown said I am concerned that if we approve this that is setting a precedence for future cases, and it is almost a smack in the face of the zoning that is in place now. He added normal the number chickens is not a deal, but it is a big enough deal that the County developed an ordinance.

Kimberly Ross said I understand there is no question about that. She added I think here my rebuttal is the shape of my property is what I feel is making it unique because is it not a square and the

way that our property abut up to each other is does truly make sense for it to stay where it is. It was placed there. Eventually when it comes down we will not rebuild there.

Chairman Brown asked how many acres do you have?

Kimberly Ross responded we have 3.5 acres but a large portion of it is lake.

Chairman Brown replied you have ample room to reconfigure your poultry farm to comply with the setbacks.

Kimberly Ross replied absolutely it can be done.

Chairman Brown said it is not a matter of us wanting to inconvenience you but it a matter of principal. He added I am somewhat concerned about the precedent it may set. He said I know in Alpharetta they had a really big lawsuit about 10 to 15 years ago over the same issue. He stated but I am just one (1) of five (5) members of the ZBA.

Kim Ross responded I understand, but it is important to us that our kids to know where our food comes from. She added I home school my daughter and this is a part of our curriculum for our children to know and understand. She said one of the reasons why we purchased this house was because this chicken coop. She continued it was already there and I have to spend a ton of money to do something simple to me is very similar to having a couple of dogs. She said I understand that it can get out of control. She concluded as long as I am in compliance with the number and no one is complaining I think that we should be allowed to keep them.

Tom Waller asked is this chicken coop on a permanent foundation.

Kim Ross replied no, it is a dirt floor. She explained it has multiple sections and we already had to tear out half of it because of an old sweetgum tree that would cause me a fortune to cut down. She noted that we took out a section of it and left what we needed.

John Tate stated on the map there appears to be a barn behind the lake but on the drawing it says there is an existing barn and an additional structure.

Kim Ross responded there is an extra structure that is not supposed to be there per your zoning ordinance.

John Tate ask what is that structure being used for now?

Kim Ross replied it is being used for storage.

John Tate asked could you convert that accessory structure to house the chickens?

Kim Ross responded certainly some things could get reconfigured but it a large burden to take

down this structure. She added that would not be an easy task but it is not offending anybody at this point to keep where they are where they are contained inside a secondary fence. She said if you look at this area where they are kept there is a fence around this entire structure, which is already there in place. She added there is also fence around the entire property and we are also going to build an addition which is going to limit the ability to move them because there is already a barn in place. She concluded again, if you don't allow me to keep the structure, I will do what I have to do.

Marsha Hopkins asked if it were for the fact that you a building an addition you would not know about these issues.

Kimberly Ross said correct, we did not know.

Marsha Hopkins said the point that I wanted to reiterate is that I think John mentioned in the other case, is that the time when you purchased the property, the ordinance wasn't an issue and it was known to you. She added the fact that is it chickens is one thing, but the fact that you didn't know it and it was already there is my dilemma in seeing it as a penalty to the homeowner for something she didn't create. She said so I just putting that out if anyone else wants to comment.

Anita Davis said I am having a tough time understanding because I have never owned a chicken but why can't you relocate them inside the approved area?

Kimberly Ross said because none of them are within 50 feet setback. She added I can't put them in the barn. She explained that is not place where they can go, no that is not an option. She said I will have to create a new structure within 50 feet of all property lines.

John Tate asked how many chickens do you have?

Kimberly Ross responded 12 chickens, no roosters.

Tom Waller asked do the chickens get out often?

Kimberly Ross replied no, they don't get out ever, they can't jump the fence.

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

John Tate said I feel that the homeowner should not be penalized for a situation where they did not bring in the violation. He added I also understand that this is the first time this issue has come up dealing with a chicken coop. He added that I am more inclined for approval.

Marsha Hopkins said legally, we can distinguish it. She added I don't think that this set a precedent since we can distinguish it, this is unique to me and specific to this homeowner and I tend to agree with that. She added I would lean toward the approval of it.

Chairman Brown said I will entertain a motion.

Marsha Hopkins made a motion to approve Variance #1) Petition No. A-781-21 to reduce the side yard setback from 15 feet to 5 feet to allow for a chicken coop to remain. John Tate seconded the motion. The motion passed 5-0.

Marsha Hopkins made a motion to approve Variance #2) Petition No. A-781-21 to reduce the minimum setback of 50 feet from all property lines to five (5) feet to allow a chicken coop to remain. John Tate seconded the motion. The motion passed 5-0.

Marsha Hopkins made a motion to approve Variance #3) Petition No. A-781-21 to increase the amount of residential accessory structures per individual lot from 2 to 3. 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.

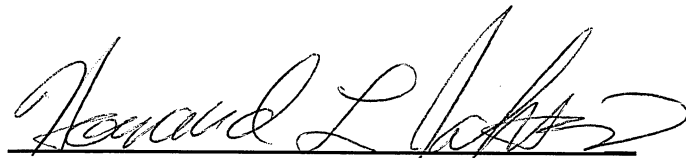
The meeting adjourned at 8:03 pm.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**



THEROL BROWN, CHAIRMAN

ATTEST:


HOWARD L. JOHNSON, ZBA SECRETARY