

Meeting Minutes 9/26/22

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on September 26th 2022, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: John Tate, Chairman
Marsha Hopkins, Vice Chairwoman
Anita Davis
Bill Beckwith
Tom Waller

STAFF PRESENT: Deborah Bell, Planning & Zoning Director
Deborah Sims, Zoning Administrator
Chelsie Boynton, Planning & Zoning Coordinator
E. Allison Ivey Cox, County Attorney

1. Consideration of the Minutes of the Meeting held on August 22nd, 2022.

Anita Davis made a motion to approve the minutes of the meeting held on August 22nd, 2022. Marsha Hopkins seconded the motion. The motion passed 5-0.

PUBLIC HEARING

2. Petition No. A-799-22, James Brinkerhoff, Owner, request the following: Variance to Section 110-133. R-70, (d) (5), to reduce the rear yard setback from 50 feet to 18 feet to allow for construction of a residential accessory structure (i.e., garage). The subject property is located in Land Lot 1 of the 9th District and fronts on Rivers Road. (The applicant has requested to withdraw the petition).

Chairman Tate made a motion to withdraw Petition No. A-799-22, Variance to Section 110-133. R-70, (d) (5), to reduce the rear yard setback from 50 feet to 18 feet to allow for construction of a residential accessory structure (i.e., garage). Bill Beckwith seconded the motion. The motion passed 5-0.

3. Petition No. A-807-22, Terry and Kristie Ferrell, Owner, request the following:

- 1. Variance to Sec. 110-79. Residential accessory structures and their uses, (g). Architectural standards, to allow for the construction of a metal accessory structure with vertical pattern siding, as opposed to the required horizontal pattern.**

2. **Variance to Sec. 110-125. A-R. (d) (5) to reduce the rear yard setback from 75 feet to 74 feet to allow an existing residential accessory structure to remain. The subject property is located in Land Lot 72 of the 4th District and fronts on Woods Road.**

Chairman Tate asked if the petitioner was present?

Terry Ferrell stated he has been a long-time resident of Fayette County. He stated he is here today to get the variance approved so he can build a shop. He stated he understands the ordinance and understands what there's a need for in the County. He stated financially this is the shop he can afford. He stated he wouldn't be here wasting anyone's time or his money. He stated he has seen within a 4 mile radius of his home, new shops and new houses with vertical siding. He stated he would not be here if he knew there was not a chance of getting approved. He stated he also has a survey for his property.

Chairman Tate asked if there was anyone to speak in support? There were none. He then asked if anyone would like to speak in opposition? There were none. He brought the discussion back to the Board for discussion. He asked Mr. Ferrell to remain at the podium in case anyone had any questions?

Anita Davis stated she's never built a structure of this nature before. She stated she understands he's requesting the material to go vertical rather than horizontal. She stated it seems you would need pretty much the same amount of material to go one way as opposed to another, maybe there's a little difference due to the cuts. She asked how much of a difference in cost would it be to have the siding go horizontally as opposed to vertically.

Terry Ferrell stated this is a pole barn built with 66 posts in the main structure. He stated there are runners on the inside. Versus if you were to frame it you would have two (2) by fours (4) running 12 foot tall, every foot. So, if you count 30 foot across, 36 down, it's over 140 feet. So, it would be more two (2) by fours (4) than it would with the runners. He stated there is a big difference. He stated he has considered that but this is still considerably cheaper and it's the way the builder builds it. He stated there is a picture in the packet where you can see the runner, He stated that's what they use to do the screws and that's what they use to mount the side. He stated there is a considerable difference.

Chairman Tate asked what stage is the building at in terms of it being constructed?

Terry Ferrell stated it has not yet been constructed. He stated the first thing is to go through Planning and Zoning to get site approval. He stated after they approve it then it goes to Health Department to get the final permit to start building. He stated he was not going to sign a contract with his builder or do anything until the County says he's good to go.

Chairman Tate stated Mr. Ferrell stated part of the reasoning for this request was that he's been in his area and he's seen other buildings with vertical structures. He stated

unfortunately that may be the case if something has not been brought to the attention of the County. He stated that may have occurred, but no one knew about it. He stated they cannot use that as a basis to override what the general ordinance says. He stated there are five (5) different categories they use to determine if there should be a variance. He stated they are limited to those five (5) categories. He stated he doesn't see all of or any of those met at this moment.

Bill Beckwith stated one of the conditions on the application is that the property will create a difficulty or unnecessary hardship. He stated Mr. Ferrell's response on the application is that it will not create a hardship and that's one of the conditions. He stated it may be difficult but according to Mr. Ferrell it's not a condition, therefore the condition is not met.

Terry Ferrell stated he didn't understand some of the questions. He stated his hardship, financial wise, this is how much he's budgeted for his shop and with any changes, he may not be able to build the shop. He stated he doesn't know what the Board would define a hardship. He said to Chairman Tate's point, the shops and houses that have vertical sidings would have had to come through the County. He stated he's sure they had to be permitted because they have mechanical, power, water, things of that nature. He stated he doesn't know how they would slip through the cracks. He stated he understands what he's saying because people just go build stuff but it's hard for him to understand how they got by with it but he's not.

Bill Beckwith asked what material is the exterior?

Terry Ferrell stated it's metal. He stated it's the same thing that's in the picture.

Bill Beckwith stated one of the things the Zoning Board of Appeals looks at is the five (5) conditions that Chairman Tate mentioned. He stated, unfortunately, financial hardships is not one (1) of them. He stated that's not one of the cases that they would really consider. He stated it's always been that way over the years. He stated they understand that but maintaining the ordinance that the County has set, anybody asking to break it would be breaking the law by having the Board approve a variance. He stated it's been set by the Zoning Ordinance that these conditions must be met for them to approve a variance. He stated as Mr. Ferrell said, it wouldn't create a hardship but would probably be difficult. He stated in some cases, probably not Mr. Ferrell's, but in some cases, it would be a convenience but not a hardship.

Terry Ferrell asked how is it a convenience if something is costing me more money?

Bill Beckwith stated, again that is one (1) thing we can't consider. He stated it's unfortunate the Zoning Board of Appeals has to function that way. He stated this has always been the criteria and if it costs more money that's unfortunate. By maintaining the ordinance of the County, which says horizontal exteriors are within the ordinance that's what we have to consider.

Chairman Tate stated he was looking back at the five (5) stipulations that must be met in order for the Board to approve a variance and he cannot see where all five (5) are met. He said he could see from the point of the literal interpretation of the ordinance would deprive the applicant rights that others in the same districts are allowed if you were to base it upon the fact that you're saying there are other citizens that have this then he'd have to look at this stipulation to say it has to be allowed. He added, from the standpoint of Zoning Board of Appeals this is not something they arbitrarily allow. He stated while there may have been some that were there he can't say that they came before the Board and therefore be able to use that particular stipulation to say you did it for somebody else. He stated he has to agree at this point that without having some viable basis to say that all of these stipulations that must be met have been met, he just doesn't see it.

Bill Beckwith stated he needed to get clarification from Deborah Bell. He asked if the horizontal siding applied to all buildings or just to resident buildings?

Deborah Bell stated it applies to residential accessory structures. There is an exemption for farm outbuildings, but it was staff's opinion that this wasn't a farm building it was a residential accessory structure.

Bill Beckwith asked Mr. Ferrell what would be the purpose of the building you want to build? He asked if he has farm implements or any implements that you'll repair in this building?

Terry Ferrell stated he has equipment that he uses, he has boats that he'll put in it. He stated he'd use it as a workshop. He stated he doesn't have a farm or tractor. It'd just be a shop and that's what he'd use it for.

Bill Beckwith asked if he planned on farming.

Terry Ferrell stated he has a lawn mower. He'll farm his land with his mower.

Bill Beckwith asked if he had a garden.

Terry Ferrell stated yes, he has a garden with jalapenos and tomatoes. He stated he farms. He then stated he had a question. He stated that the Chairman spoke about rights. He stated with his rights, some got allowed and some didn't. He stated that he reverts back to this, these structures and buildings are there and had to come through the County. He stated he could get a stack of 20 or 30 pictures within a five (5) mile radius of his house. He stated he wouldn't be here wasting their time and pleading his case if he didn't this wasn't fair. He stated he doesn't feel comfortable going to somebody's else and start taking pictures. He stated he's not going to turn anybody in or complain or do anything like that.

Bill Beckwith stated let me tell you what often happens with us. He stated that Mr. Ferrell has a second (2nd) variance for an existing building that might be too close to the setback

on the wetlands. He stated this is almost every situation we have. He said someone requests a building permit and building department will come out and check the property and make measurements. He stated you probably didn't know that the building was too close to the setback. He stated in many cases that's how a lot of these cases are found out. He stated someone who may have this structure you're referring to with the vertical siding on it, they may have put it up before the ordinance is made but unless someone makes a complaint to the code enforcement or somebody wants to build something else on their property, there's no way the County and staff as it is could go around and check the buildings that may be in violation. He stated that's why there's a second (2nd) variance, someone came out because of the shop you wanted to build and measured that distance. He stated that's probably how most of those buildings are in existence with vertical sidings.

Terry Ferrell asked don't you have to have a permit for EMC or Georgia Power to hook up power to a building in the County?

Bill Beckwith stated he did not know.

Terry Ferrell asked if anyone on the Board knew? The Board members did not know. He stated he is almost certain you do or they won't hook up to it because it's not passed inspection. He stated he reverts back to these buildings, that are fairly new because he knows the ordinance was put in way before these were built. He stated he is 99 percent sure you have to have a permit for them to come out and hook up a meter box because it has to be inspected, same as a house. Everything has to be inspected before EMC or a power company would come out there and do that. He stated he understands what the Board is saying, people do build shed out bins and stuff like that but he's referring to the buildings that have a vertical siding and that he knows had to go through the County.

Bill Beckwith stated unfortunately we are only considering your situation.

Terry Ferrell stated this is apart of my situation to get this approved because everyone else has gotten one (1). He stated he's trying to do the right thing, get it permitted and go through all the right steps to get this done so that when he closes on this, everything is done, and he can sleep at night.

Chairman Tate stated he understands what Mr. Ferrell is saying, he cannot offer any explanation as to how. He stated he certainly believes these buildings exist however coming before the Zoning Board of Appeals for variance, if it was never brought to them they would have no way of knowing about it. He stated we are bound by the ordinance, the ordinances themselves with certain exceptions and if we make an exception we do have to abide by the conditions as already stated. He stated that's where we are at this point. He asked if there were any other comments or questions?

Terry Ferrell stated he had a question. He stated Ms. Bell referred to this as a farm usage. He asked can they define what kind of farm usage this shop needs to be to have that exception?

Deborah Bell stated generally if a property is not an active farm, if they were to show that they were farm status for things like tax purposes and other agriculture purposes they would have a conservation plan through NRCS (Natural Resources Conservation Service) and a farm number through the Farm Service Administration. She stated that's been the standard she's used on past agricultural properties.

Chairman Tate stated he sees there is also a second request. He stated it is to allow an existing structure to remain with an encroachment into the rear yard setback. He asked if the reduction is from 75 to 74 feet?

Deborah Bell stated Mr. Ferrell's measurement on the ground, he came up with the building being about a one (1) foot encroachment but when we look at the aerial views of the property, Mr. Ferrell didn't have a survey that included the structure so rather than have a surveyor come out and locate the structure, she took the existing parcel survey that showed the property lines and overlaid it on an aerial photograph on the tax map with the tax lines. She stated she took some known measurements to calibrate those distances and she consistently came up with a measurement of a three (3) foot encroachment. She stated her recommendation was to approve a five (5) foot encroachment to provide a margin of error rather than ask Mr. Ferrell to survey it since it was a minor encroachment. She stated Environmental Management reviewed it in regards to floodplain and it did not appear to encroach on the floodplain.

Bill Beckwith stated the structure is listed as a pole barn. He asked is that correct?

Terry Ferrell stated yes.

Bill Beckwith asked if it has any siding on it?

Terry Ferrell stated the top where it's closed in does. He said he thinks it's call T111 siding, four (4) by eight (8) sheets, it's four (4) foot tall.

Bill Beckwith asked what the structure is used for?

Terry Ferrell stated he uses it for storage.

Bill Beckwith asked if Mr. Ferrell is the original owner of the property?

Terry Ferrell stated yes. He bought the property and built the house 22 years ago.

Bill Beckwith asked did he build the barn also?

Terry Ferrell stated yes, about 18 years ago.

Bill Beckwith stated he is looking to see if that was part of a farm.

Terry Ferrell, stated he has a tractor, bushhog, and his plow. He stated he had horses there. He stated he had a farm at one time. He added he does have pictures of the back fence that was surveyed. He stated he did print them out, those are the stakes in each corner of the property. He stated he measured from the stakes and that's what he sent to Planning and Zoning.

Bill Beckwith asked if he uses the pole barn to store equipment.

Terry Ferrell stated yes. It stores his tractor, trailer, and boat. He stated he also has pictures of the measurements.

Chairman Tate stated while they are at a standstill on the first variance, he will make a motion for the second (*see motion below*).

Terry Ferrell stated the only thing else he can say about his shop is that with his luck his taxes will go up which will increase revenue to the County. He said he's okay with that, he's 51 years old and finally gets his shop and this is the one he can afford. He stated he really really doesn't see an issue with the vertical siding. He said he does get the ordinance, if he was the only shop in Fayette County that was wanting to do this he would understand. He said he is trying to do the right thing and go about it the right way so when he sleeps at night he can sleep and doesn't have anybody looking over his shoulder. He added it's not hardly visible from the road.

Chairman Tate stated yes looking at the pictures he can see the house is located well beyond the road and certainly appreciates what Mr. Ferrell is saying about wanting to do this within the boundaries and the Board is in the same position. He stated they have to abide by the ordinances subject to certain specific conditions and if all of those conditions are not met then it puts the Board in a difficult position to simply say well let's just do it anyway because there are other people who may have gotten this done. Not necessarily through the Board but got it done and at this point he cannot see that that is a valid basis for that. He said he understands Mr. Ferrell's position but this is where the Board is at at this point.

Terry Ferrell said if it was a problem someone would be here to oppose it, correct?

Chairman Tate said I'm sorry?

Terry Ferrell stated if it was a problem with a resident in the County they should be here to oppose it, correct? So you say, do for one (1) and not for the other. He said that's why they

had the sign in the front yard for 30 days and why we had this [public hearing] if someone wanted to oppose it.

Chairman Tate stated a person has a right to voice their opposition with regard to when someone has requested a variance and those are comments the Board would take into consideration but that is not the overall binding factor that leads them to whatever determination the Board would make. The decisions are based on the guidelines that the Board has to follow; what does the ordinance state and under what basis does the Board have the authority to overrule that particular ordinance and they have very specific conditions and very specific circumstances so all they're trying to do is stay within the guidelines laid out before them.

Bill Beckwith stated what Chairman Tate is saying is if there was another situation just like this and we voted against the variance and someone comes along and says well you did it for him, how about doing it for me. He stated as an official Board action that would be something that would cause a problem. He said what they try to do is follow as much as possible the ordinance and they don't set any precedent that would cause legal action, doing something for one person and not for another. He stated by these ordinances being set the way they are the Board has to be bound by the ordinances and follow what they say. He said at some point there may be a change to the ordinance that makes it a different situation but right now like John was saying, without causing a precedence that would be opposed to the ordinance, not being an equal application of the ordinance would be what the Board wants to stay away from. He asked the chairman if that's what he was saying.

Chairman Tate stated yes and perhaps, Mr. Ferrell was stating that the other individuals with the vertical structures had them done then who did they come before, how did they get the approval? He stated he has no answer to that. He can not recall and they have all been there a various number of years but he cannot recall a situation where someone came before the Board and said well I need to do this because someone else did it without some valid basis.

Terry Ferrell stated okay, he said you wanted to make it equal and you cannot do for one (1) that you can do for the other so how do these houses around here have vertical siding? Homes that people live in and get away with it and I can't? You can't do for one (1) but can do for the other, how do they do it because I know a house has to be inspected. He said it has to have a final CO, goes through a building permit all that. It has to go through Planning and Zoning permit process, correct? He said you want to make it equal then let's make it equal. He said I'm just asking to build a little shop, I'm not asking to build a strip mall.

Chairman Tate said he understands but they cannot address the other situations because there would have to be some consideration given if you were to say well look I have this evidence, these people came before you. That means that we set a precedent.

Terry Ferrell stated he can't get that. He doesn't think the County is going to say here's all these permits because I'm just Joe Blow down there blowing smoke.

Chairman Tate said he understand Mr. Ferrell's position on that, it's just from the standpoint of this particular Board and the position their in at this point, he cannot think of a particular circumstance where they came before us. He doesn't know what Fayette County officials, or Board, or agency if these people went through that or not. He stated Mr. Ferrell's point is well made however they cannot react based upon what someone else may or may not have done.

Anita Davis stated she is not unsympathetic to what Mr. Ferrell is trying to do but she can't help but wonder if there is any other type of façade that he could possibly build. Could he possibly use stone? Or anything else to camouflage the vertical, is there any other option. Did he speak to the builder to find out if there was any other option?

Terry Ferrell stated no he hasn't discussed that because he started before with this. This is what he likes, this is what's in the budget, this is what he builds, a lot of these. He's seen them, a personal friend of his had it done. He did a great job and that's why he's stuck with this set of plans. He said he can't afford to put stone on the side. He said you're talking 12 foot walls by 36, that's a lot of money to do that and he's trying to keep this cost down as best he can.

Chairman Tate asked did Mr. Ferrell say he had not looked at other options or that he looked at this and this is what he wanted?

Terry Ferrell stated he knows there's other options and everything but he was trying to keep the cost down. With this shell and the way it's built, with this call it a pole barn garage because it's really stout and strong. That's why he picked it because of the overhangs he builds and everything with it, it fits with the needs on his property.

Chairman Tate asked if he would like to consider other possibilities as opposed to us continuing with this and perhaps table it?

Terry Ferrell said so pretty much what you're saying is change the siding to horizontal? What else can you do that's affordable to me to get this approved? He stated he doesn't know what else to look at and do.

Bill Beckwith stated they really try to work with the individual, the homeowners, and the property owners and by doing that we suggest that there may be other options to do what they want without breaking the law. He asked the Chariman, John are you saying perhaps we could table this and let Mr. Ferrell look at other options without denying him this evening?

Chairman Tate said if that's what he'd like to do, at least that's available. At this point if they were to put it to a vote and it's not approved then you would not be able to do it.

Terry Ferrell asked how many votes, does it have to be unanimous?

Chairman Tate stated three (3) votes one (1) way or the other.

Bill Beckwith stated again there may be some other options or other alternatives, some other material besides metal. He stated you mentioned that you've only talked to one builder.

Terry Ferrell stated he has talked to three (3) other builders and the closest bid to his bid which was \$40,000 for this shop, the closest bid was \$60,000 and that was with horizontal siding and that was from a builder he spoke with that builds a lot in Fayette County too.

Bill Beckwith said there may be some other creative solutions in the meantime.

Terry Ferrell said here's my options, you all will vote, you and you will probably turn it down and I'll have to find some different plans or either let y'all vote and go on with some different plans?

Chairman Tate stated if they vote and it's approved, then his variance is there. If it's not approved, he asked Deborah Bell to explain what would happen.

Deborah Bell stated if it's not approved, if it's denied there is a waiting period before you can come back and request another variance. The other option is to build something that is compliant with the architectural standards.

Terry Ferrell said so there's no waiting period for that? To apply for a different variance?

Deborah Bell stated if he brought in construction plans that complied with architectural standards he wouldn't need a variance.

Terry Ferrell said I'd be applying for a new one (1)?

Deborah Bell stated he can just amend his existing application and say will use this type of material and if it meets those standards he wouldn't need a variance at all. She stated if it's denied and he wanted to proceed with his building permit he would need to shift gears and provide a revised plan.

Bill Beckwith asked if it's table can it be tabled for 60 days? Is there an option for 30 or 60 days. He stated I think it can go 60 days.

Chairman Tate stated if they were to consider having it tabled would Mr. Ferrell want 60 days to consider other possibilities?

Terry Ferrell stated it sounds like he doesn't have a choice so sure.

Chairman Tate said they can vote.

Terry Ferrell stated if the Board votes and turns it down he'll try to find something else he can afford.

Bill Beckwith said or they could table it and can give him 60 days. It's still in a situation where he can come back as Deborah said, to provide other information.

Terry Ferrell said they can go ahead and table it. He said he has got one question, the houses that are built in Fayette County how do you let them get by when they have vertical siding? You say you want it equal and fair. How does it get by them, how does it get by yall and how does it get a final CO? This is a home that the Board knows has to be permitted. He stated if they want him to, he can go get pictures and take chances and he'll come back and show everybody. He said he wouldn't be here wasting time if he knew he didn't have a legit argument.

Chairman Tate said he understands and at this point Mr. Ferrell said he wanted to have this tabled. Certainly, if he returns in that period of time perhaps Mr. Ferrell may have something but at this point that seems like the better option. He asked Mr. Ferrell, did he say he did wish to table it?

Terry Ferrell stated that's fine (*see motion below*).

Terry Ferrell asked if he has to come back to this meeting and do this again? He asked who does he have to see.

Deborah Bell stated yes, he would have the option to come back to the meeting in 60 days. She stated we will send an updated calendar for that and if he has alternative materials that you'd like to present for the Board to consider, he could present them at that meeting. Terry Ferrell asked if he comes to Deborah Bell with the different plans that meet the criteria for the County does he still have to come back to the meeting and wait 60 days.

Deborah Bell stated no, he could withdraw the variance request for that part of the variance and they would close the case, similarly to the first hearing tonight and he would proceed with his building permit.

Terry Ferrell asked if he needed to bring the sign back before the County gets more money from him?

Deborah Bell stated yes, if he returns the sign the deposit for the sign is refunded.

Bill Beckwith made a motion to table Petition No. A-807-22, Variance to Sec. 110-79. Residential accessory structures and their uses, (g). Architectural standards, to allow for the construction of a metal accessory structure with vertical pattern siding, as opposed to the required horizontal pattern for 60 days. Tom Waller seconded the motion. The motion passed 5-0.

Chairman Tate made a motion to approve Petition No. A-807-22, Petition No. A-807-22, Variance to Sec. 110-125. A-R. (d) (5) to reduce the rear yard setback from 75 feet to 70 feet to allow an existing residential accessory structure to remain. Bill Beckwith seconded the motion. The motion passed 5-0.

Chairman Tate asked is there a motion to adjourn?


Anita Davis made a motion to adjourn. Bill Beckwith seconded the motion. The motion passed 5-0.

The meeting adjourned at 7:55 pm.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY



JOHN TATE, CHAIRMAN



CHELSIE BOYNTON, ZBA SECRETARY