

# Meeting Minutes 1/23/23

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on January 23<sup>rd</sup>, 2023, 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 and Zoning Director  
Deborah Sims, Zoning Administrator  
Chelsie Boynton, Planning & Zoning Coordinator  
E. Allison Ivey Cox, County Attorney

1. Call to Order.
2. Pledge of Allegiance.
3. Approval of Agenda.

*Bill Beckwith made a motion to amend the agenda and table item number six (6) until the February 27<sup>th</sup> meeting. Marsha Hopkins seconded the motion. The motion passed 5-0.*

4. Consideration of the Minutes of the Meeting held on December 19, 2022.

*Marsha Hopkins made a motion to approve the minutes of the meeting held on December 19<sup>th</sup>, 2022. Anita Davis seconded the motion. The motion passed 5-0.*

## PUBLIC HEARING

5. **Petition No. A-815-23, Howell & Cheryl Turner, Owner, request the following: Variance to Sec. 110-125. A-R (d) (6) to reduce the side yard setback from 50 feet to 29 feet to allow construction of a residential accessory structure (i.e. swimming pool). The subject property is located in Land Lot 89 of the 7<sup>th</sup> District and fronts on Sims Road.**

Deborah Bell stated the property is bounded by a significant amount of floodplain and watershed protection buffers. She continued staff recommends approval due the property presenting a unique situation, with typical soils that are unsuitable for construction.

Howell and Cheryl Turner presented their case. Mr. Turner stated the accessory structure will be in the backyard, behind the house. He continued it must be placed on the left backside of the house due to the floodplain on the other side of the house.

No one spoke in opposition or in support.

Chairman Tate brought the discussion back to the Board.

Bill Beckwith stated he visited the property and saw the flat creek running through the back of the property. He continued he understood how the soil is not conducive to building something there and having to move to the highest level even though it has to be closer to the side.

*Bill Beckwith made a motion to approve Petition No. A-815-23, Variance to Sec. 110-125. A-R (d) (6) to reduce the side yard setback from 50 feet to 29 feet to allow construction of a residential accessory structure (i.e. swimming pool). John Tate seconded the motion. The motion passed 5-0.*

6. **Petition No. A-816-23, Apremier Properties Group, Inc, Owner, and Darrell Baker/ Principle/ Randolph Williams, LLC, Agent, request the following: Variance to Sec. 110-170. Nonconformances, (l) Nonconforming structures. Request enlargement of a nonconforming structure: To allow an unpermitted addition to primary structure to remain. The subject property is located in Land Lot 26 of the 7<sup>th</sup> District and fronts on Highway 54W and Tyrone Road.**

*Bill Beckwith made a motion to table Petition No. A-816-23, Variance to Sec. 110-170. Nonconformances, (l) Nonconforming structures. Request enlargement of a nonconforming structure: To allow an unpermitted addition to primary structure to remain. Marsha Hopkins seconded the motion. The motion passed 5-0. The petition is tabled until the February 27<sup>th</sup> meeting.*

7. **Petition No. A-817-23A, Tyrone 54, LLC and BBWJ, LLC, Owners, and DG Development Partners, LLC, Agent, request the following: Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. The subject property is located in Land Lot 25 and 26 of the 7<sup>th</sup> District and fronts on Highway 54 W and Tyrone Road.**

Deborah Bell stated items seven (7) thru ten are four (4) separate parcels that she would like to present as one case because they are all a part of the same project. She continued these parcels were recently rezoned from C-C to C-H. She added the applicant had to dedicate right of way. She stated this is because when a project is rezoned, and the parcels will change the County has a requirement that any property that doesn't provide the standard right-of-way per the County's thoroughfare plan is required dedicate right-of-way. She stated they have to dedicate approximately a ten (10) foot strip along Tyrone Road at the Highway 54 intersection. She stated the applicant is seeking a reduction to the front yard setback along Tyrone Road. She continued staff recommends denial, stating that reducing the front yard building setback is

inconsistent with the County's goals and vision as outlined in the Comprehensive Plan and that the property does not present a peculiar hardship. Ms. Bell displayed the submitted site plan and pointed out the existing property line, new property line once the right-of-way is dedicated, the setback, and the requested setback.

Richard Lindsey represented the applicant and stated they are seeking a variance to reduce the front yard setback along Tyrone Road. He stated the property was rezoned from C-C to C-H in December of 2022. He stated his client wants to develop a small commercial node consisting of a convenience store, a quick serve restaurant, a high-end automated car wash, and a self-storage facility. He stated though the property is just shy of ten acres, a third of it is taken up by a floodplain. He continued the western side of the property is unbuildable. He added without the variance, the commercial node cannot be developed as was presented in December. He stated instead what will happen is his client will lose one of the four lots. He will be restricted to three lots and the buildings on the lots will have to be smaller. Mr. Lindsey stated there are five (5) conditions that must be met for a variance. He stated it is his opinion that all five (5) have been met. He continued the first condition is there are extraordinary and exceptional conditions. He stated there are such conditions on the property since one third of it is unbuildable. He continued the second condition is met due to the increased right-of-way will result in a loss of one of the lots and a reduction of size of the remaining buildings therefore the 75-foot buffer creates a difficulty and unnecessary hardship. The third condition is met by the large area of floodplain is a peculiar condition not seen on other similar sized properties in the County. He stated for the fourth condition, the variance will not cause a detriment to the public or impair the intent of the development regulations since one third of the property cannot be built on. He continued even when the property is developed will have areas of trees, forest lands, and undisturbed natural areas which will help to maintain the rural character of the County. He stated for the fifth condition, his client dedicated right-of-way at no cost. This increased right-of-way with the floodplain squeezes the buildable area. He stated there are other ways for the County to mitigate the requested variance. He continued, additional landscaping could be added to the buffer area that would soften the approach, the additional right-of-way saves the County money when they want to widen or improve the intersection. He stated the variance would be a win-win, it would save the County money and allow his client to develop the property as shown to the Board of Commissioners. He concluded, his client is seeking a setback reduction and is willing to increase landscaping along Tyrone Road to mitigate the impact. Mr. Lindsey further stated that Georgia law changed in July of 2022 and prior to that time, anytime an applicant was seeking rezoning to a property you had to preserve your constitutional rights in order to appeal an indicative decision rendered by a Board of Commissioners or a city council. He continued; the Georgia legislature changed the definition of a zoning decisions to include variances. He stated he believes applicants must now preserve their constitutional rights when presenting a variance request. He asked that the Board not take offense. He stated if there was a denial it would be an unconstitutional taking of his client's property, it would violate the due process requirement of the federal and state constitution, it would violate the taking without just inadequate compensation, and it would violate the equal protection requirements of the constitution.

There was no one to speak in opposition or support.

Chairman Tate brought the discussion back to the Board.

Bill Beckwith stated the Board tries to accommodate as much as possible and they like to look at other alternatives. He asked if the client had a site plan if they were to be denied?

Mr. Lindsey stated they would lose the car wash or the self-storage which were the only reasons they sought the rezoning. He continued the C-C zoning permitted the convenience store and the restaurant. The C-H was needed for the car wash and self-storage.

Joey Petros stated he is with DG Development Partners. He referenced the displayed site plan and pointed out the floodplain running in front of the storage facility. He stated if they come 75 feet off the new right-of-way designation, the back piece becomes an unusable piece of land. He continued; it turns into a situation where they would have to eliminate the use altogether. He stated they would have to shift the storage family somewhere else, eliminating one of the other uses. He added he is trying to get back to the point where he would be with the buildings had he not had to provide the right-of-way designation. He stated according to his civil engineer, the County is taking 25 feet of his property which is why he's requesting the 25-foot setback reduction. He continued the right-of-way is 50 feet from the center of Tyrone Road which is 25 feet of his property. He stated if this issue had never come up, he would be able to put his buildings where he'd like to put them. He added the right-of-way is being provided for free at no cost to the County or taxpayers.

Bill Beckwith asked Deborah Bell for clarity about the requirement of providing additional right-of-way?

Deborah Bell stated it is a requirement for a property that is subject to rezoning or subdivides a property, they must dedicate whatever right-of-way is needed to meet the County's Throughfare Plan's requirements. The County has roads classified as Major Arterials, Minor Arterials, Collectors, and Local Roads. She continued they each have a different amount of right of way, as the roads gets lighter in use, the right of way gets smaller. She stated on the older roads, they may not provide that much right of way so when someone comes in to do this type of development it's a requirement. She added the requirement here is to provide a total of 50 feet of right of way from centerline and it was probably about a 30 foot right of way to begin with from centerline of Tyrone to their property line. She stated the total requirement of Tyrone Road is 100 feet, 50 feet coming from each side of the centerline.

Bill Beckwith asked if the right of way dedication was in dispute?

Deborah Bell stated no, the right of way dedication has already been agreed to. The dedication has not been made yet as it is one of the conditions of the rezoning along with replating this property.

Joey Petros stated he doesn't own the property yet, he's under contract. He asked what would happen if he doesn't buy the property and the current owner does nothing with the land, if the County wants to widen Tyrone Road, what will happen? He asked if the property would have to be condemned?

Deborah Bell stated if the conditions of the rezoning are not met then the zoning would revert to its prior zoning.

Joey Petros stated he understands it would revert to C-C. He continued if he doesn't buy the property and the County decided to widen Tyrone Road, the County would have to condemn his property and pay him for that.

Deborah Bell stated presumably yes.

Bill Beckwith asked for a site plan.

Joey Petros provided a site plan to the Board. He stated this is essentially what could happen if they don't receive the variance. He continued it shows the elimination of one of the four (4) uses, the self-storage shifted to where the car wash is and the car wash shifted up to where the restaurant is.

Bill Beckwith asked which use would he lose?

Joey Petros stated the quick serve restaurant would go away.

Anita Davis asked if the variance is denied is this there only option? She asked if it was possible to turn one of the buildings another way?

Joey Petros stated yes this is the only option due to the floodplain. He stated according to his civil engineer, they don't want to impact the floodplain. He spoke about needing to retaining walls to keep them out of the floodplain. He added it very difficult to develop the property in the manor they'd like to due to the floodplain.

Chairman Tate stated he saw the revised site plan which moves the storage facility and asked about the possibility of reducing the square footage of the storage facility and moving the other structures back 25 feet? He stated those seem to be past the boundaries.

Joey Petros referenced the displayed site plan. He stated the storage facility is already encroaching the floodplain, if he shifts it and/or shrink it, it doesn't make economic sense to develop that property. He stated the other buildings get cut down to a size that doesn't work, especially the car wash. He then pointed out the detention. He stated it eliminates the back site and reduces the size of the other buildings. He continued he could move the storage facility down but then he would lose the quick serve restaurant. He stated he is seeking this variance because of the right of way dedication because of the County planning to widen the road at

some point. He added he is not seeking it because he doesn't want to be closer to the road, he just wants to sit his buildings where they would've sat had he not had to dedicate right of way. He is proposing that his buildings sit 75 feet off the property line, ignoring the right of way dedication.

Bill Beckwith asked about the displayed site plan. He asked about the line that encompasses all his buildings.

Joey Petros stated that line is 75 feet off his original property line and 50 feet off the right of way designation. He stated he's losing 25 feet as a result of the right of way designation and seeking the variance to get the 25 feet back.

Chairman Tate stated he understood the Board of Commissioners approved the rezoning; however, the Zoning Board of Appeals are tasked with the County ordinance that states there must be 75-foot setback. He added they look at the stipulations upon which they may override the ordinance. He continued they must look closely and seriously at those conditions. He stated he has not heard any statements that would be a basis for approval.

Bill Beckwith stated in the past they've recognized the fact when a rezoning takes place, and some land is lost, and they've let the applicant's building be closer to the road because of a county situation. He continued that Mr. Lindsey and his team have made a compelling argument about the 25 feet that the ordinance had to be given up. He stated he cannot support the denial of the variance.

*John Tate made a motion to deny Petition No. A-817-23A, Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. Tom Waller seconded the motion. The motion passed 4-1. Bill Beckwith was in opposition of the denial.*

8. **Petition No. A-817-23B, Tyrone 54, LLC and BBWJ, LLC, Owners, and DG Development Partners, LLC, Agent, request the following: Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. The subject property is located in Land Lot 25 and 26 of the 7<sup>th</sup> District and fronts on Highway 54 W and Tyrone Road.**

Richard Lindsey waived the Public Hearing.

*Anita Davis made a motion to deny Petition No. A-817-23B, Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. Marsha Hopkins seconded the motion. The motion passed 4-1. Bill Beckwith was in opposition of the denial.*

9. **Petition No. A-817-23C, Tyrone 54, LLC and BBWJ, LLC, Owners, and DG Development Partners, LLC, Agent, request the following: Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. The subject property is located in Land Lot 25 and 26 of the 7<sup>th</sup> District and fronts on Highway 54 W and Tyrone Road.**

Richard Lindsey waived the Public Hearing.

Marsha Hopkins stated she supports denial because the petition goes against the satisfaction of the five (5) elements.

*Marsha Hopkins made a motion to deny Petition No. A-817-23C, Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. John Tate seconded the motion. The motion passed 4-1. Bill Beckwith was in opposition of the denial.*

10. **Petition No. A-817-23D, Tyrone 54, LLC and BBWJ, LLC, Owners, and DG Development Partners, LLC, Agent, request the following: Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. The subject property is located in Land Lot 25 and 26 of the 7<sup>th</sup> District and fronts on Highway 54 W and Tyrone Road.**

Richard Lindsey waived the Public Hearing.

*Marsha Hopkins made a motion to deny Petition No. A-817-23D, Variance to Sec. 110-144. C-H. (d) (3) (a) (1) Major thoroughfare: Arterial to reduce the front yard setback from 75 feet to 50 feet to allow for construction of a convenience store, car wash, interior access self-storage & quick serve restaurant with drive through. Tom Waller seconded the motion. The motion passed 4-1. Bill Beckwith was in opposition of the denial.*

11. **Petition No. A-818-23, Baby Bird and Company Automotives, LLC, Owner, and Mark Schaeffer, Esq, Glasser and Schaeffer, PC, Agent, request the following: Variance to Sec. 110-146. M-1, (d) (5) to reduce side yard setback from 25 feet to 15 feet to allow existing primary structure to remain. The subject property is located in Land Lot 217 of the 5<sup>th</sup> District and fronts on Carnes Drive and Walter Way.**

Deborah Bell stated the principal structure was constructed in accordance with the zoning requirements of C-H which is a 15' setback. The property was rezoned from C-H to M-1 on December 8, 2022, with the intent to operate an automotive paint and body shop. M-1 zoning has a side yard setback of 25'. Rezoning the property to M-1 created the nonconformity. She

added staff recommends approval. She stated the basis of the approval comes from Section 110-170 of the County Ordinance. She read 'as the result of subsequent amendments, or due to the acquisition of property for a public purpose, a rezoning, or a variance, shall be considered a legal nonconforming lot and may be utilized for the establishment of uses or the placement of structures and improvements, as long as, all applicable regulations can be met. Where the dimensional requirements of the zoning district cannot be met in terms of the placement of structures and improvements, a variance authorized by the zoning board of appeals shall be required.' Ms. Bell continued this is a formality to set everything right with the new zoning district.

Mark Schaeffer stated he represents Baby Bird and Company, and they purchased this property to run a vehicle restoration facility. He stated part of the process is to paint the cars and the C-H zoning was iffy. He continued they had numerous discussions with Ms. Bell, and she stated they would be allowed to have a paint shop if the property is consistent with the area. He stated moving the building would be an extreme cost and impact the current septic system. He stated they are just trying to get back into conformity with the new zoning.

There was no one to speak in opposition or in support of the petition.

Chairman Tate brought the discussion back to the Board.

Bill Beckwith stated this seemed similar to the previous items they just reviewed.

*Bill Beckwith made a motion to approve Petition No. A-818-23, Variance to Sec. 110-146. M-1, (d) (5) to reduce side yard setback from 25 feet to 15 feet to allow existing primary structure to remain. Tom Waller seconded the motion. The motion passed 5-0.*

12. **Petition No. A-819-23, Johnnie K. Holland, Owner, and Randy Boyd Agent, request the following: Variance to Sec. 110-79. Residential accessory structures and their uses (f) Guesthouses. To increase the maximum allowed square footage from 700 to 768 square feet, to allow existing structure to remain. The subject property is located in Land Lot 254 of the 5<sup>th</sup> District and fronts on Kenwood Road and South Kite Lake Road.**

Deborah Bell stated this property is the subject of a recent rezoning. She stated one of the conditions of rezoning was for the applicant to resolve the question of the guesthouse that exceeds the 700 square feet allowance by obtaining a variance or do some other modifications if the variance was denied. She stated staff recommends approval.

Randy Boyd stated he is representing the Ms. Holland. He stated the Hollands purchased the property in 1969, built their primary house in 1978, and built the guest house in 1987. He stated the property was rezoned from A-R to R-45 in December of 2022. He stated Planning and Zoning staff realized the house was 768 square feet when the Hollands were in the process of subdividing. He continued they are asking for a variance to maintain the guesthouse.



There was no one to speak in opposition or support of the petition.

Chairman Tate brought the discussion back to the Board.

Bill Beckwith asked if that was one of the few A-R zoned properties on the north side of the County?

Randy Boyd stated they are dwindling pretty quickly.

Bill Beckwith asked how large was the main piece of property?

Randy Boyd stated where the house and guest house are sitting is about 2.7 acres and the other lots vary based on topography and there are three additional lots zoned R-45.

Chairman Tate stated one of the factors that goes into the consideration of a variance is whether the structure was put up in violation in any of the ordinances or whether because of circumstances such as a change in zoning that would cause the structure to become a nonconformity of what the statute calls for. He added he doesn't see any basis, aside from its overage, to deny the petition or say it must be brought down to the 700 square feet when it's been in that position for years.

*John Tate made a motion to approve Petition No. A-819-23, Variance to Sec. 110-79. Residential accessory structures and their uses (f) Guesthouses. To increase the maximum allowed square footage from 700 to 768 square feet, to allow existing structure to remain Marsha Hopkins seconded the motion. The motion passed 5-0.*

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Chairman Tate asked is there a motion to adjourn?

*Marsha Hopkins made a motion to adjourn. Anita Davis seconded the motion. The motion passed 5-0.*

The meeting adjourned at 8:00 pm.

ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY

  
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JOHN TATE, CHAIRMAN

  
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CHELSIE BOYNTON, ZBA SECRETARY