

# Meeting Minutes 3/27/23

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on March 27<sup>th</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  
Brian Haren

**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.

*Marsha Hopkins made a motion to accept the agenda for the March 27<sup>th</sup> meeting. Brian Haren seconded the motion. The motion passed 5-0.*

4. Consideration of the Minutes of the Meeting held on February 27, 2023, and Special Called Meeting on March 6, 2023.

*Anita Davis made a motion to approve the minutes of the meeting held on February 27, 2023. Bill Beckwith seconded the motion. The motion passed 5-0.*

*Bill Beckwith made a motion to approve the minutes of the special called meeting held on March 6<sup>th</sup>, 2023. Brian Haren seconded the motion.*

## EXECUTIVE SESSION

*Bill Beckwith made a motion to go into Executive Session to approve the Executive Session minutes of the Special Called Meeting on March 6<sup>th</sup>, 2023. Brian Haren seconded the motion. The motion carried 5-0. Executive Session began at 7:04pm.*

*Bill Beckwith made a motion to end Executive Session and enter the regular meeting. Marsha Hopkins seconded the motion. The motion carried 5-0. Executive Session ended at 7:07pm.*

## PUBLIC HEARING

5. Petition No. A-832-23, Benjamin Hendricks and Barbara June Hendricks, Owner, request the following: 1) Variance to Sec. 110-125. A-R, (d) (2) to reduce the lot width from 250 feet to 180 feet to allow for construction of a single-family dwelling. 2) Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 30 feet to allow for construction of a single-family dwelling. 3) Variance to Sec. 110-125. A-R, (d) (4) (b), to reduce the front yard setback from 75 feet to 55 feet to allow for construction of a single-family dwelling. The subject property is located in Land Lot 255 of the 5<sup>th</sup> District and fronts on Hill Road.

Debbie Bell, Planning and Zoning Director stated this is a legal nonconforming lot. She stated the plat was recorded in 1954 and the lot has been in this configuration since before many iterations of the Zoning Ordinance. She stated when you measure the lot width at building line is to be measured parallel to the road. She continued the initial request was 180 feet but when she measured parallel to the road it came out to be about 214 feet so there's a difference in the recommendation. She continue the request to remove the front yard setback from 75 feet to 55 feet is due to the location of the well, and trying to fit in the house and the septic system as well as keep a safe distance from the drainage soil across the property. She stated staff recommends approval for all variance requests however staff recommends the lot width variance be increase to 200 feet from the 180 feet.

Benjamin Hendricks stated he is the property owner. He stated he and his family live on the adjoining lot. He stated they move there five (5) years ago and purchased the adjoining lot with it with plans to build a house for family. He stated they are planning to build a house for his mother and father-in-law. He concluded with being able to answer any questions the Board has.

Chairman Tate asked if there were any comments in favor or opposition of the petition there were none. The discussion was brought back to the Board.

Bill Beckwith asked about the difference between the 200 feet and the 180 feet.

Deborah Bell, state when the applicant measured they were measuring perpendicular to the two (2) property lines so they had a shorter measurement for the initial request. She stated, lot width at building line is measured parallel to the road. She continued she came up with a measurement of about 214 feet. She stated 200 feet would provide enough of a distance for this lot since it's an older lot.

Bill Beckwith asked if with the angle will it meet their 180-foot request

Deborah Bell stated it will. She stated the way the definition describes it is different from how the request was initially phrased.

Chairman Tate stated everything seems to be straightforward and asked if there was a motion.

*Brian Haren made a motion to approve Variance to Sec. 110-125. A-R, (d) (2) to reduce the lot width from 250 feet to 200 feet to allow for construction of a single-family dwelling. Marsha Hopkins seconded the motion. The motion passed 5-0.*

*Brian Haren made a motion to approve Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 30 feet to allow for construction of a single-family dwelling. Bill Beckwith seconded the motion. The motion passed 5-0.*

*Brian Haren made a motion to approve Variance to Sec. 110-125. A-R, (d) (4) (b), to reduce the front yard setback from 75 feet to 55 feet to allow for construction of a single-family dwelling. Marsha Hopkins seconded the motion. The motion carried 5-0.*

6. Petition No. A-833-23, Martin Padilla Jr., Owner, request the following: Variance to Sec. 110-137. R-40, (d) (6) to reduce side yard setback from 15 feet to 6 feet to allow an existing structures to remain. The subject property is located in Land Lot 156 of the 5<sup>th</sup> District and fronts on Red Oak Drive.

Deborah Bell displayed the survey of the property. She gave the history of the project: She stated the applicant has had a series of building permits that started in 2019. He received a stop work order for construction without a permit. In May 2020 he obtained a permit for the swimming pool and a brick wall to the side. He applied for a variance in June 2020, case A-730-20 requesting to encroach a side setback with additional structures. The variance was denied and the applicant proceeded with the structure under a permit issued using corrected setbacks. That permit expired due to lack of progress and inspections. He then obtained a permit to build a detached garage with a pool house. That permit and the pool permit expired for lack progress and inspections. She stated in August of 2022, he submitted a new building permit for the pool rebuild. The application showed the detached garage, the covered patio, and the pool cabana structure. All structures were shown in compliance with the setback requirements. In January of 2023, Department of Building Safety entered a complaint in the system for what was currently being built and it not matching the approved plans. She stated the applicant had submitted plans for a one story detached garage and the applicant was building a two-story building for a garage and a guest suite on the second floor. The garage and detached pool house and masonry appeared to encroach on the setbacks. She stated when an accessory structure is within two feet of the setback, they require a foundation survey to show it is properly located. The foundation survey showed there is an encroachment with the stairs, part of the garage, and part of the pool cabana. She stated the issue is not with the covered patio or brick wall but with the roof structures. She stated that permit is also expired due to lack of progress. Building Safety issued a stop work order when they found the structure was not be constructed per the approved permit. Building Safety noted there will be issues of re-permitting whether the variance is approved or not. She stated Leslie Nieber, Assistant Director of Building Safety is in attendance and can answer questions related to the building permits.

She stated because it was previously denied and was shown in the correct location, staff recommendation is denial to reduce the side yard setback since it does meet the criteria.

Chairman Tate asked if there was anyone to speak in favor.

SanDee Law stated she lives across the street from the project. She stated she moved there in September in 2021. She stated the construction and look of the property, they are for it. She stated the applicant has done a great job and is increasing the value of his property. She stated she believes the entire neighborhood is benefitting from the project. She stated the project is beautiful, she is a general contractor and knows quality work.

Chairman Tate asked if there was anyone to speak in opposition.

Mark Trettel spoke in opposition. He stated he lives on the same street. He stated this has been going on since 2019. He stated it is not enhancing the value of his property. It is frustrating to live in the neighborhood and seeing the construction going on for so long. He stated if we have 15-foot setbacks it applies to everyone. He stated the applicant works in construction and should know the rules. He stated this has been going on for five (5) years. He stated his lot is a big lot and other places to build but chose to build right next to his neighbors. He stated the applicant hasn't put grass back down, he drives trucks on his lot, and has been cited for having commercial vehicles. He stated he is not in support of this and the applicant is not helping the neighborhood, he is hurting the neighborhood.

Ann Coxwell spoke in opposition. She stated she moved to her home in 1994 and it was a nice neighborhood but it has changed. She stated the neighbors have been patient. She stated she walks every morning and they have placed their septic tank in the street. She stated they will listen if someone tells them correctly but she does not think they know.

Dean Breest spoke in opposition. He stated he spoke at the previous case for a variance three (3) years ago. Since that time three (3) structures have been built and he does not understand why he would do this. He stated for those that live there they will have to endure another four (4) or five (5) years of it sitting there even if the variance is denied tonight. The applicant won't take it down or change it, he will just move forward it. The longtime residents will have to endure the commercial vehicles, the noise, the dirt, all the activities associated with a construction project. He stated it is his hope that the project comes to completion and no commercial vehicle be allowed on the property. He stated by the time they knew anything it was too late, and people were building what they want. He stated it would be his request that whatever is done there be some type of time limit.

Martin Padilla Jr. stated he is the owner of the property and it has taken a long time because he is doing the project himself on the weekends. His plan is to be completed by May or June of next year and then move to the front yard. He stated he does not plan to have any commercial vehicles on the property other than his daily driving truck. He stated the garage is 12 feet tall but it will not be used to place a commercial vehicle, he is planning to park two (2) cars in

there, one at the top and one at the bottom. He stated when he first started the project he was remodeling his pool and did not know he needed a permit. He stated he received the stop work order. He stated he went through the process and got the permit for the pool. Later, they decided to do a pool house and the one story detached garage. He stated he did make a mistake submitting the plans for one story. He started doing the first elevation and then decided to do the second elevation. He stated he did not do this to cut corners and that he passes inspections. He stated right now the pool and patio only need final inspections. He stated he could not get the inspections because he has a hold on the detached garage. He has to have safety alarms on every window and door. He stated he has submitted new plans to Building Safety. He stated it the patio is nine (9) feet away from the property line, the stair landing that goes to the second floor is with the 15 feet but the going down to the main landing is six (6) feet away from the property line. He stated if he gets his variance, the only thing he needs to do is get plumbing and electrical so that he can get his walls. He stated once he finishes with his projects, he won't have any equipment or big trucks. He stated every time he's made a mistake, he's worked to try to correct them. He continued it started when his property line was marked wrong. He stated when he had the previous permit issued, he was preparing for inspection for the framing and the permit was expiring in four (4) weeks. He stated he received a stop work order and he couldn't work anymore. He stated he went to the County and submitted the requirements, and he is only waiting on the variance. He stated he has an extension on the pool permit and once he installs the alarm on the windows and doors, he will be able to do the final inspection for the pool. He stated all that will then be left is the garage.

Ann Coxwell asked if they will be able to keep their two (2) story garage?

Chairman Tate stated he can not answer that and they are only there to discuss the variance of the side yard setback.

Ann Coxwell stated they have always built a large mailbox and brick wall that should not be allowed because it is a fire hazard.

Bill Beckwith stated if anyone else would like to comment, the Board is only discussing the side yard setback variance, the distance between the project and the property line. Anything else that may be going on is not something the Board can address. They are only discussing if they should allow the variance from 15 feet to six (6). Bill Beckwith then asked if Mr. Padilla knew there was a 15 foot setback.

Martin Padilla Jr. stated he did not know when he started building.

Bill Beckwith stated he thought he spoke with the Department of Building Safety.

Martin Padilla Jr. stated he started without a permit and then got the first stop work order and that's when he found out that he had to stay 15 feet from the property line. He stated the frame is 15 feet away, the corner of the garage is 13 feet away. He stated that his property line was marked incorrectly. He stated he received the second stop work order because the garage didn't

look like what he submitted and that's when he was asked for a survey. He said everything was moving smoothly until he decided to build a second story.

Bill Beckwith stated the second story isn't the issue tonight.

Martin Padilla Jr. he stated the middle landing and stairs are in violation.

Bill Beckwith confirmed he was doing everything himself and there was no contractor.

Martin Padilla Jr. stated it is just him and family. He stated the neighbor whose property he is getting closer to, is not concerned about the encroachment. He stated his neighbor's fence is on his property but it doesn't bother him as long as he keeps his dogs inside. He stated he could not build the detached garage in the back because of his septic system. He then stated once he does sprinkler systems, he doesn't want to be driving through his yard to a detached garage in the back. He stated the guesthouse is not for rental. He stated it is for family that may come to visit and can stay the night and go home the next day.

Bill Beckwith asked if this is denied, what would have to be done.

Deborah Bell, stated he would have to move the structures that are encroaching because they are not permitted for that location.

Anita Davis asked if the stairs could be reconfigured to be within the setback.

Martin Padilla Jr. stated no because the front will be the garage and the side is the pool but there's no space to place the stairs. He stated the only place where he could put them is in the front the garage and have the landing in the middle of the driveway.

Anita Davis asked if it's possible to move the stairs to inside the building?

Martin Padilla Jr. stated it would take most of the space of the garage. He stated if he has to take this down, the outdoor kitchen has stones, the patio has been approved and has columns and stone all the way around. He stated it has shingles and roofing. He stated it is pretty much done and is only missing final inspection. He stated it will cost him a lot of money to remove everything. He stated because the garage is so tall he couldn't have one set of stairs, he had to have a landing and a middle to meet requirements.

Anita Davis stated it looks like the stairs are on the rear.

Mr. Padilla Jr. stated the upper landing has to go into the middle landing so the whole wall used for the back of building is right at the 15-foot setback. He stated the front corner is 20 feet from the property line. The upper landing is four (4) feet wide so that's why it's away from the property line. The bottom landing is four (4) feet by eight (8) feet long, so the bottom of the landing is within the 15 feet.

Anita Davis asked if it's possible to start the staircase in the front instead of the back to meet the setback?

Mr. Padilla Jr. stated if he starts the stairs in the back it will be the same scenario. He stated the further he comes to the front the further he is from the property line. He said his only other solution is to switch the stairs all the way to the front but it won't look better.

Bill Beckwith stated that it may not look nice but it will be in the requirements which gives him an option.

Chairman Tate asked in August of 2022 he submitted a plan of a detached garage, covered pool, and pool cabana and everything was in the boundaries, what happened?

Mr. Padilla Jr. stated he thought it was in the boundaries because he had someone come and mark his property line. After he got the stop work order, Planning and Zoning requested a survey and they found out he was not within the 15 feet.

Chairman Tate asked if the survey was done in January of 2023.

Mr. Padilla Jr. stated yes.

Chairman Tate stated in 2020, Mr. Padilla Jr. applied for a variance to reduce the side setback. He asked what was that variance for?

Mr. Padilla Jr. referenced the foundation survey and stated it was for the dark line on the survey. He stated that was the original placement of the building. He stated he was still under construction and that's when he started everything without a permit. After the first stop work order, he moved everything in because the variance got denied.

Chairman Tate asked if the two story garage increased the footprint?

Mr. Padilla Jr. stated no. It was the same framing as the first floor. He stated he was not trying to hide because he knew he needed to have inspections.

Chairman Tate stated the footprint for the one story, places him at 12.9 feet and with the addition of the second story that's why he's much closer.

Mr. Padilla Jr. stated no. They measured 15 feet from the marked property line but when he did the second floor is when he got the stop work order. He stated the Building Department is okay with it because he resubmitted all the paperwork but there is a hold because Planning and Zoning requested the survey and that's when he found out he was not 15 feet. He stated it would still be 12.9 feet as a one-story building.

Brian Haren read the applicant's history. He stated the applicant submitted a new building permit application as a pool rebuild application and the site plan submitted showed a detached garage, covered patio, and pool cabana. All structures were shown in compliance. He stated the applicant is looking for a variance for something that wasn't approved, and he cannot support that. He stated if the applicant doesn't build the second story, he's okay for that part of the variance. He stated he knows he wants to but if it puts him in noncompliance then he can't.

Mr. Padilla Jr. stated it is only the bottom landing. He stated he is only taking 32 square feet.

Brian Haren stated he is still encroaching and if he hadn't built the second story and the stair case they would not be having this discussion and he's only been permitted for the one story structure.

Mr. Padilla Jr. stated he is within the rules to build the second story.

Brian Haren asked if he has the permit for it?

Mr. Padilla Jr. stated he cannot get the permit until he gets the variance. He stated they were about the issue the permit until Robert spoke with Deborah Sims and Planning and Zoning requested a survey.

Deborah Bell stated the site plan showed the structures in the setbacks. She stated they are relying on him to build what he shows in his site plan.

Mr. Padilla Jr. asked what was the point of having inspections if they are relying on him?

Bill Beckwith stated she is relying on him to do what he's been approved to do.

Mr. Padilla Jr. stated they should be relying on inspectors. He stated he's put a lot of money in this and he thought everything was okay and if he does something wrong, they should be corrected at the time of the inspection.

Chairman Tate asked to speak with the Assistant Building Director.

Leslie Nieber, Assistant Building Director, asked how she could assist?

Chairman Tate asked how the building now being two stories fits in compliance with the initial permit?

Ms. Nieber stated the building is not in compliance with the Department of Building Safety. She stated if the variance is approved, he will still need to submit a revision to their department and it will need to be approved. She stated when it was approved it was one story with no stairs and there was no issue. She stated they are there because of the stairs and the noncompliance of



the building. She stated even if the Board approves or denies, he will still need to walk through the regulations of an accessory building being a guesthouse.

Mr. Padilla Jr. stated he will submit whatever is needed.

Ms. Nieber stated, as far as the building being in compliance, they couldn't have stopped it any sooner.

Mr. Padilla Jr. stated he put the stairs in because it made it easier for him to go up and down than trying to climb a ladder with his materials.

Chairman Tate asked if the Board had any other questions or comments.

Mr. Padilla Jr. asked what will happen to the corner of the patio that is encroaching?

Chairman Tate did not understand the question.

Deborah Bell stated they only submitted this as one variance since it is all one structure. Mr. Padilla Jr. is referring to the covered patio and kitchen area. She then displayed the survey on the screen and stated it was not separated for variances, they are all one structure that's built together.

Mr. Padilla Jr. asked if he would be able to continue how it is or would he have to take everything down?

Chairman Tate stated they are only looking at if the variance from 15 feet to 6 feet should be approved or not.

Brian Haren asked if the person who marked his property line was licensed surveyor?

Mr. Padilla Jr. stated he does not know, he hired someone from the internet.

Brian Haren stated that it was not a licensed surveyor.

Mr. Padilla Jr. stated he only marked the property lines; he didn't do a survey. He stated if the County had requested a survey from the beginning he probably wouldn't be there.

Bill Beckwith stated it is up to the property to make sure the property lines are correct before starting construction. He stated he doesn't know how the property line was marked but the only correct way to do it is through a licensed surveyor.

Chairman Tate asked if there were any more questions or comments. There were none. He stated their function is to determine a variance and if the basis for the variance fits within a certain criterion. He stated they have five (5) factors to look at and while they've had

comments for and against, he cannot say all five (5) factors are met and does not support approval of this.

*Brian Haren made a motion to deny Variance to Sec. 110-137. R-40, (d) (6) to reduce side yard setback from 15 feet to 6 feet to allow an existing structures to remain. Bill Beckwith seconded the motion. The motion carried 5-0.*

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Chairman Tate asked is there a motion to adjourn?

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

The meeting adjourned at 8:23 pm.

ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY

  
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JOHN TATE, CHAIRMAN

  
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CHELSIE BOYNTON, ZBA SECRETARY