

Meeting Minutes 4/24/23

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on April 24, 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
Bill Beckwith
Brian Haren

MEMBERS ABSENT: Anita Davis

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 approve the agenda. Marsha Hopkins seconded the motion. The motion passed 4-0. Anita Davis was absent.

4. Consideration of the Minutes of the Meeting held on March 27, 2023.

Brian Haren made a motion to accept the minutes of the meeting held on March 27, 2023. Bill Beckwith seconded the motion. The motion passed 4-0. Anita Davis was absent.

PUBLIC HEARING

5. **Petition No. A-834-23, Stephanie Ceglia and Vincent Ceglia, Owner, Randy Boyd, Agent, request the following: Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 8 feet to allow existing accessory structures (barn and playhouse) to remain. The subject property is located in Land Lot 30 of the 4th District and fronts on Highway 85 Connector.**

Debbie Bell, Planning and Zoning Director stated this barn was built about 25 years ago and the property was brought to their attention because the parcels are owned between family members. She stated the family is doing a land swap and consolidating creating a slightly less nonconforming parcel with a more conventional shape. She continued because the structures

were built prior to the subdivision of the parcels it has put them too close to the property line. Ms. Bell then displayed the parcels for the Board members on the projector and explained how the parcels would be altered. She stated the Ceglia parcel will now front Bankstown Road. She continued, the zoning of the parcel and surrounding parcels are A-R as well as the Land Use. She stated there is a small pond but no other environmental issues. She displayed the barn and playhouse in question. She then displayed the proposed lot configuration.

Randy Boyd stated he is the land surveyor engineer presenting on behalf of the Ceglias. He stated they purchased the property in October of 2021. He stated they were going to swap out with the Knight property owners to clear up road frontage issues and that's when they found out the barn and playhouse was too close to the property line. He displayed pictures of the barn and playhouse. He then explained the history of the parcels. He stated Scott Knight purchased the property in the late 90s and it was a 73 acre tract that was intended to be a family property. He continued that the son, Jay, had children who played baseball. Jay created fields that his children and teams would play on. He stated the barn was created to store equipment and have gatherings after a ball game. He stated it was an honest mistake that the son and other property owners built it too close to the property line. He continued, they have letters from Scott Knight and Perry Knight and they have no objections to the variance. He stated that it cannot be seen from the road. He explained the Ceglias purchased it, had nothing to do with it, and would like to request the reduction.

Stephanie Ceglia spoke in favor. She stated the structure is picturesque and respectfully asked for the Board to allow the structures to remain.

Scott Knight spoke in favor. He stated Jay was having problems finding places for the children to practice so he built the t-ball field. He continued, as the children got older, they built two more. He stated they didn't know the barn was close to the property line until Mr. Boyd surveyed it and told them. He agreed it cannot be seen from the street and asked that the Board approve the variance.

There were no comments in opposition. Chairman Tate brought the discussion back to the Board.

Brian Haren asked staff if there was a construction permit?

Debbie Bell stated she was unable to locate one but permits from 25 years ago are not digitized. It would take an extremely long time to research.

Brian Haren asked if this would have been legal 25 years ago? He asked if the lot would have had setbacks back then?

Debbie Bell stated yes, there would have been setbacks in place.

Bill Beckwith stated drove down to the parcel and confirmed it cannot be seen from the road. He asked if this is a family compound?

Randy Boyd stated yes.

Bill Beckwith stated though they all own separate parcels, it's family that owns everything.

Randy Boyd stated yes.

Bill Beckwith stated when the barn was built, it was built for convenience and there was no indication of requirements such as setbacks because it was on everybody's property.

Randy Boyd agreed and stated if Jay could be here tonight he would explain he did not know and would have moved it over had he known. He stated there isn't much opportunity to move it over due to the driveway. He stated it fits well where it's located. He continued they weren't trying to get away with anything, they were just trying to build some ball fields.

Chairman Tate stated he agreed with the comments made by Bill Beckwith.

John Tate made a motion to approve Petition No. A-834-23, Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 8 feet to allow existing accessory structures (barn and playhouse) to remain. Brian Haren seconded the motion. The motion passed 4-0. Anita Davis was absent.

6. **Petition No. A-835-23, Yves Fenelon and Gertha Fenelon, Owner, request the following: Variance to Sec. 110-134. R-55, (d) (6) to reduce the side yard setback from 25 feet to 10 feet to allow an accessory structure outside the buildable area to remain and complete construction. The subject property is located in Land Lot 250 of the 5th District and fronts on Highway 279.**

Debbie Bell stated this is the construction of a new building in conjunction with a new single family residence. She stated foundation survey are required for all structures built within two feet of the setback. When a site plan was submitted they showed the structures in the correct location however when the foundation survey was submitted, it showed the accessory structure encroaching the setback. She continued, the zoning is R-55. Surrounding zoning is R-55 or A-R and Land Use is medium density residential. She stated there are no environmental features that affect the property. Ms. Bell displayed the foundation survey and pointed out the structures and encroachment. She also displayed the site plan that was originally submitted. She stated it is staff's recommendation that the variance be denied. They should have waited until they had the foundation survey returned before starting with the vertical construction.

Chairman Tate reminded the petitioner that there is not a full Board present and if there was a tie vote it would result in denial. He stated the petitioner has the option to table to petition.

Yves Fenelon stated he wanted to proceed. He stated he moved to Fayetteville when he retired. He stated they are requesting a variance out of special conditions that were not in his control. As a retired couple they cannot afford to demolish or rebuild. He stated construction will cost more to build it into compliance. He stated the violation is not visually evident, the variance, if granted, will not negatively impact the nearby property owners. He continued the variance will not increase traffic or affect the fire department or safety. He stated it will not change the character of the neighborhood or violate the spirit of the zoning regulations.

There were no comments in support or in opposition.

Mr. Fenelon then provided a letter in support from his neighbor.

Bill Beckwith asked if the builder responsible for putting the house where it is?

Mr. Fenelon stated yes.

Bill Beckwith asked if he was present?

Mr. Fenelon stated yes.

Bill Beckwith asked if they had a reason for why they did not wait for the foundation survey? He asked if they had any comments to help them understand the situation.

Obraine Forde introduced himself as the builder. He stated they were working off of the location of the pin. When the foundation survey was done the pin was moved and they were told the pin had been in the wrong place. He stated that's when they realized the house was in the setback. He explained how an original survey is done and the pin was placed in one location yet when the foundation survey was done, the surveyor moved the pin and said it had been in the wrong place.

Mr. Fenelon explained there was confusion with the pin and they do not know what happened.

Chairman Tate clarified Mr. Forde's comment. He asked if he said the pin was moved?

Mr. Forde stated yes. He stated there are nine parcels and nine different builders and nine different surveys.

Chairman Tate asked if the primary residence and guesthouse are being built simultaneously?

Mr. Forde stated yes.

Chairman Tate asked when was the foundation of the guesthouse laid?

Mr. Forde stated they were laid at the same time.

Chairman Tate asked if that was done prior to the foundation survey.

Mr. Forde stated yes.

Chairman Tate asked if there was any reason they didn't wait to begin on the guesthouse?

Mr. Forde stated he pulled permits at the same time.

Bill Beckwith asked Ms. Bell who does the foundation surveys?

Debbie Bell stated the homeowner is responsible for hiring a surveyor to prepare the foundation survey and then it is submitted through the electronic permitting program.

Bill Beckwith asked if it's a registered engineer?

Debbie Bell stated it would be a registered land surveyor.

Bill Beckwith asked Mr. Forde if the surveyor was on his team or from a different organization?

He stated he's an independent surveyor.

Marsha Hopkins asked if the surveyor had been made aware of the issue?

Mr. Forde stated yes and the surveyor has said because there was so much work going on he doesn't know what went wrong. He stated the surveyor is not taking accountability for the situation.

Bill Beckwith asked if it was because he had more work than he could handle?

Mr. Forde stated it was due to the nine (9) parcels and so much work going on.

Chairman Tate asked how much of the guesthouse is completed.

Mr. Forde stated 80%.

Brian Haren asked if the same surveyor did all the surveying in this subdivision?

Mr. Forde stated no. There were nine (9) lots and nine (9) different surveyors.

Marsha Hopkins asked staff are there checks and balances along the way during the construction?

Debbie Bell stated for new constructions, building inspectors conduct building inspections. They are strictly inspecting the construction of the building. She stated the County can't field locate which is why the requirement is in place for them to hire registered surveyors. She stated they will have an established point of beginning. The surveyor are to work off of a benchmark such as fire hydrant and they will have the known measurements to measure back to the lot. She stated the County would not be able to walk into the field and say where the property lines are.

Chairman Tate wanted to clarify about the process. He stated the homeowner has to hire a builder to build the house. Is the next step getting a permit?

Mr. Forde stated yes.

Chairman Tate stated construction can't start until they get the permit.

Mr. Forde stated yes.

Chairman Tate asked what's the timeline for getting the permit?

Mr. Forde stated he has to get the survey before getting the permit. He stated there are two surveys, the original and the foundation. He said he was working from where the pin was placed during the original survey but the pin was moved between the original survey and the foundation survey and they realized they were too close to the property line.

Chairman Tate asked if they're required to wait on the foundation survey before continuing with the construction?

Mr. Forde stated no. He stated he pours the foundation and then the surveyor comes and does the foundation survey.

Deborah Sims, Zoning Administrator, stated they are not allowed to get framing inspections until they have an approved foundation survey.

Mr. Forde stated that's what they are trying to get now and are unable to get the framing inspection until the foundation survey is passed. He stated it is not in the code that they cannot build until they get foundation survey. He continued, it's stated that the foundation survey is a requirement, and they suggest when the builder should get it. He stated they have to do the framing before they can get a framing inspection. He stated they've already framed and are trying to get framing inspections.

Bill Beckwith asked is the process to get the foundation survey, have it approved, then start framing?

Mr. Forde stated no, it's not in the code like that code. He stated they can pour the foundation and start vertical construction but before they can get a foundation inspection they have to get a foundation survey.

Bill Beckwith asked when do they establish where they want to put the foundation?

Mr. Forde stated it's on the original survey.

Bill Beckwith asked if the foundation survey is needed before they pour the foundation?

Mr. Forde stated no, the foundation is poured.

Bill Beckwith asked staff if that is correct?

Debbie Bell stated they are allowed to pour the foundation, the next series of inspections would be the framing survey so they have the option to wait and not go vertical until that foundation survey is approved, there's not an inspection in between to hold it.

Deborah Sims stated the goal of the foundation survey at the time was to try and stop them before anything got higher but there's no stop but they can't get inspections if they don't have a foundation survey. She stated there's nothing that says they can't go beyond but it's at their own risk.

Bill Beckwith asked if there pins that establish the boundaries of the foundation?

Mr. Forde stated it shows the property. After the foundation survey, there's a pin that shows the house is in the right place. He continued, there's nothing that says they cannot frame.

Bill Beckwith asked what does the foundation survey do?

Deborah Sims stated it marks that they've met setbacks and shows they are compliant with any flood hazard if they have to have a minimum finished floor. She stated it is to make sure they are not encroaching on any watershed setbacks or that they have built to a safe level if there was an elevation established on that survey.

Bill Beckwith asked if it would be prudent to have the survey approved before pouring the foundation?

Deborah Sims stated it would be prudent to consult with the surveyor throughout the entire process. She stated they've seen forum boards and the surveyor can say these are forum boards and these are the elevations. She stated he just needs to work hand in hand with his surveyor.

Bill Beckwith stated he's seen evidence where there was a stop work order because the foundation was not at the location it was supposed to be.

Deborah Sims stated though a stop work order hasn't been issued they are essentially under a stop work order because they can't get further inspections.

Brian Haren asked what is the timeline for foundation survey approval?

Debbie Bell stated it can be done same day.

Deborah Sims stated it's approved by Planning and Zoning and Environmental Management but 95% of the time it is approved same day.

Chairman Tate asked about the site plan. He stated it appears the guesthouse is directly behind the primary structure and on that site plan, both structures are within the setbacks. He stated the guesthouse is not located behind the primary residence on the foundation survey.

Mr. Forde stated the site plan is based on the original survey and where the pin was. He stated they measured from where the pin was saw they could still get 25 feet so they didn't have to put it exactly there. He stated the first survey said they could build there but then everything changed with the foundation survey.

Chairman Tate asked why did they move it?

Mr. Forde stated when they measured they realized they could move it over. It was based on where the pin was.

Chairman Tate stated they didn't place it directly behind the primary residence.

Mr. Forde stated it was based on the pin.

Bill Beckwith stated the site plan shows the guesthouse at the proper location and the foundation survey shows it encroaching. He stated somewhere between where it was designed to be built and where he built it there was a mistake it.

Mr. Forde stated he was working off the pin to make sure he was in the building line.

Bill Beckwith stated it appears the surveyor surveyed the foundation and found out the guesthouse had encroached because the building was built differently than the site plan. He stated there are two layouts, one is correct and after the work was done it was incorrect.

Mr. Fenelon stated there was a mistake and they don't want to put all the blame on anyone. He stated there was a lot of work going on at once and Mr. Forde was following the pin. He stated they are looking for the variance because he and his wife are both retired and cannot afford to demolish or move the guesthouse. He stated there is nothing else they can do to bring it into compliance. He stated they admit their mistake like the previous case. A mistake was made and they are seeking a variance. He stated they are not close to the property owner and the property

owner did not have an issue. He stated they could not come because of work. He stated it will not increase traffic or affect fire or safety. He continued he is trying to see what can be done.

Brian Haren stated the site plan and survey were done by the same company and that somebody measured very badly. He stated he could understand if it was one (1) or two (2) feet but this is 15 feet. He continued, he's worked as a surveyor before and they notice 15 foot errors.

Bill Beckwith stated they've had cases where the homeowners have been in similar situations where the surveyor is at fault and the homeowner had to suffer. He stated he gets the idea of the pin being removed. He continued he is in a quandary about what to do.

Marsha Hopkins stated they clearly did a disservice, but it is their role to uphold the requirements to grant a variance. She agreed it is a quandary. She continued she doesn't know if it's their responsibility to make right what someone else did wrong because it is outside of their scope.

Chairman Tate stated looking at the five conditions of the variance, he can see where in some instances that would be a financial hardship, and he too is in the middle. He stated from the standpoint of the homeowner it doesn't appear to be a situation caused by anything done by Mr. Fenelon. He continued, they are bound by certain stipulations at the same time. He stated he would give the Board a moment for consideration.

Bill Beckwith stated again they've had cases in the past where the survey was incorrect and the homeowners had to suffer the consequences but he's never felt comfortable about homeowners having to deal with that. He continued, the builder is here and has admitted to making to mistake. He doesn't see a reasonable resolution to this situation by having the homeowner suffer because of this. Bill Beckwith made a motion to approve the variance.

Chairman Tate agreed and stated he would second the motion due to the hardship to the homeowner and some of the other factors.

Bill Beckwith made a motion to approve Petition No. A-835-23, Variance to Sec. 110-134. R-55, (d) (6) to reduce the side yard setback from 25 feet to 10 feet to allow an accessory structure outside the buildable area to remain and complete construction. John Tate seconded the motion. The motion passed 4-0. Anita Davis was absent.

7. **Petition No. A-837-23, Butch's Auto, LLC, Owner, and Atlantic Billboards, LLC (Mike Fitzgerald), Agent, request the following: Appeal the decision of the Zoning Director to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. The subject property is located in Land Lot 199 of the 13th District and fronts on Highway 314.**

Executive Session

One item of threatened litigation. Bill Beckwith made a motion to go into Executive Session. Brian Haren seconded the motion. The motion passed 4-0. Anita Davis was absent.

The Board recessed into Executive Session at 8:07 p.m. and returned to Official Session at 8:14 p.m.

Return to Session: John Tate made a motion to return to Official Session. Brian Haren seconded the motion. The motion passed 4-0. Anita Davis was absent.

Regular Session

Mike Fitzgerald stated the boards are effective for local businesses. He stated he knows there is reluctance to them as indicated by denial of the first nine (9). He suggested dressing them up and making them look nice by having them say “Welcome to Fayette County” and making them match the character of the pavilion. He stated going the other right will be years of litigation and a big expense for the tax payers of Fayette County. He asked if they would talk to the Commissioners and see if there is a way to make a win-win out of the situation.

Adam Webb stated he would go through the issues of the denial. He stated it is similar to last time. He stated at the time the sign ordinance was adopted the County did not have the internal Zoning procedures adopted in the appropriate fashion. That means the sign ordinance is a nullity. He continued there is a Supreme Court case directly on point involving landfill and the County went on to court below and went to Georgia Supreme Court and the Georgia Supreme Court said the law of Georgia is clear; if you don't have the local zoning procedures adopted in accordance with the Zoning Procedures Law, any code you adopted during that time period is nullity. He stated there is strict compliance requirements in Georgia. He stated that fact alone is one reason the Board should grant the appeal. He stated the other basis are somewhat similar. He continued, in January 2011, when the sign ordinance was adopted, it was not adopted at a public hearing. It was adopted on the consent agenda. He stated the consent agenda can never be a public hearing. He stated the minutes are the law. There was no public hearing. He continued, there was no legal ad. He stated there has to be a legal ad when you pass a sign ordinance when you regulate signs based on zoning. He stated this is the law of Georgia. He stated no legal ad is a nullity and no public hearing is a nullity. He then stated if the local rules had been adopted at the time, a planning commission public hearing and a Board of Commissioners public hearing is required. He stated two (2) public hearings are required. He stated the County did not do this. He stated if they had been adopted, they would not have been complied with here. He stated these are four (4) reasons under the Zoning Procedures Law why the sign ordinance that was used to deny the application is invalid and void. He stated his recommendation is to get the ordinance cleaned up because the applications will continue to come in. He stated they have ended up with some that were left open for years and they ended up with dozens of locations. He gave Fulton County as an example where Sandy Springs, Milton, John's Creek, and Alpharetta all had to permit billboards because the County kept letting applications come in instead of closing it up and doing the right thing. He stated it's simple, you just have to adopt the rules that you have now in a manor that is compliant with the

Zoning Procedures Law. He stated there is a second level of legal basis which is the constitutional items. He stated Georgia has a constitution that is more protective of speech than the First Amendment and the Georgia Supreme Court has been clear on that. He stated they had a series of cases that led to the ordinance being passed that's at issue here tonight. He referenced the Coffee Cases. He stated it was three (3) cases and the County lost them all. The County was found not to have properly considered Georgia's constitutional requirements and adopting its code, not to have properly balanced what it was trying to do and what it did in the code, and later on the Court held that damages was owed. He stated they ended up settling the case for a couple of billboards on Highway 85 and getting some money from it. He stated he thinks this is what could happen in this case. He stated the County has a ban on billboards and the state of Georgia says you can't do that. He stated they have to be allowed like strip clubs have to be allowed. He stated Georgia Supreme Court says you cannot ban speech. You have to allow it under some part of the code. He stated that's a simple argument and that's a serious problem and Georgia law is very strong on that. He stated the last basis is the letter of the denial. He stated it deals with needing a survey. The County says they needed a survey and they've shown before that is made up. The code says you need a site plan showing the proposed location. He stated the application shows exactly where it will be. He stated they looked at all the sign applications in the County for the last few years and there were no surveys. He stated this was made up for this case. He stated you can't make up rules when you're talking about speech permit because it has a constitutional dimension. He stated for these reasons it's a very strong appeal and they hope that they will take back word to the their Commissioners that this is a bad situation and will get a lot worse when it's forced to be dealt with. He stated he would answer any questions.

Allison Cox, County Attorney, stated he's arguing that the ordinance was not passed properly. She stated even if it wasn't, Georgia Law will allow them to rely on the previously adopted ordinance which was adopted in 2005, after a proper notice in September 2005. She stated the it went before Planning Commission on September 13th and the Board of Commissioners in October. It was tabled and the sign ordinance was passed in November. She stated they have the minutes and everything was properly done for that ordinance. She stated they have the legal ad for it with the date of September 7th, 2005. She stated most of the constitutional arguments around sign ordinances, particularly cases he's referring to, the sign ordinance has been completely rewritten since the Coffee case. She said it's content neutral, based on size and height restrictions. She stated nothing about speech is involved in the sign ordinance. She stated although there is some language that refers to a ban on billboards, they do nothing to enforce any such ban. Everything is looked at in accordance with the size limitations and returned to the petitioner to redraw in size limitations that the ordinance requires.

Debbie Bell stated they do require all building permits for houses and accessory structures to be shown on a survey. She stated the reason for that is because qpublic is a depiction of those parcels, it isn't a survey grade accuracy and the ariel photography is not top dead center over every single parcel so you'll get variation throughout the site. She stated it's good for looking at when estimating purposes and zoning purposes but for the purposes building a structure, they require a site plan be shown on a survey.

Chairman Tate stated is the role of the Board is to approve the denial.

Allison Cox stated yes.

Chairman Tate asked if there was a motion.

Brian Haren made a motion to affirm the decision of the Zoning Administrator and Planning and Zoning Director for Petition No. A-837-23, to deny an application for a sign permit, per Sec. 108-28. - Denial, revocation and suspension. (d) Appeals. Bill Beckwith seconded the motion. The motion carried 4-0. Anita Davis was absent.

Chairman Tate asked is there a motion to adjourn?

Brian Haren made a motion to adjourn. Marsha Hopkins seconded the motion. The motion passed 4-0. Anita Davis was absent.

The meeting adjourned at 8:31 pm.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY



JOHN TATE, CHAIRMAN



CHELSIE BOYNTON, ZBA SECRETARY