

# Meeting Minutes 6/12/23

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on June 12, 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  
Anita Davis

**STAFF PRESENT:** 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 approve the agenda. Bill Beckwith seconded the motion. The motion passed 5-0.*

4. Consideration of the Minutes of the Meeting held on May 22, 2023.

*Brian Haren made a motion to approve the Minutes of the Meeting held on May 22, 2023. Anita Davis seconded the motion. The motion passed 5-0.*

## PUBLIC HEARING

5. Petition No. A-838-23, Willie Montgomery and Laquinta M. Montgomery, Owner, request the following: Variance to Section 110-137. R-40 (d) (6), to reduce the side yard setback from 30 feet to 14 feet to allow existing detached accessory structure (garage) to remain on flag lot per Sec. 110-106. The subject property is located in Land Lot 164 of the 5<sup>th</sup> District and fronts on Victoria Drive.

Debbie Bell, Planning and Zoning Director displayed the lot and stated that there are a number of constraints on the slab with respect to floodplain and buffer, which is what necessitates the variance. She then showed the survey and stated it shows the floodplain extrapolated with some corrections for the existing contours. She stated they had two options of a way to deal with this particular site. They could have gone through and revise the development plan. Because this was a case where the setbacks were increased by the developer. But the quicker option was simply to get a variance for the pool. And the garage is just a little smidgen of the

pool deck and the garage. Even if they had amended the setbacks, the garage, a small corner, about six centers of the garage would have still been in the amended setback. So they opted to request a variance in this situation. She continued it is staffs opinion that the property presents unique situation. This the original structure on the house was a house that did burn. And the current owners bought the property after the house had been burned and cleaned up. She stated the detached garage, and the swimming pool were existing and they rebuilt about 40 years ago. The fact that they encroach on the setback was not the current owners fault. They're simply seeking to get a variance so that they can get a building permit and build a new but they are constrained between where the septic system can be located and be outside the floodplain and where the house will fit. She stated staff recommends approval of the variance request. She concluded that there is a note that there's an outstanding stop work order dated from January based on some land disturbance that was done. This is through environmental management. The owners have been advised that and they're in touch with environmental management and they'll have all of that straightened out before they will get any building permits.

Chairman Tate asked if the petitioner was present.

Willie Montgomery introduced himself and stated they discovered this additional lot that was there. The private home was demolished so it was just a lot that had a detached, the driveway was there, all power, all the electricity was there. He stated it was an intriguing buy for them for their final family, which we thought was a fun process. He stated he did not know the detached did not meet the setback requirements. Nor was that disclosed during the close to closing applying property from the prior owner. He stated as they were made aware of these challenges, they became very familiar and accustomed with the County doing things the right way. He continued the existing conditions has been in place for 40 years and they had no idea, it was just important for them to have a detached garage and a pool. He stated as they found out more about setback violations, the builder made over \$40,000 and they had to terminate that contract. He stated they've been in touch with Planning and Zoning and the Environmental Departments to make sure they're checking all the required boxes.

Chairman Tate asked if there was anyone to speak in support or opposition. There were none.

Brian Haren asked if there is any record of permits for structures that are in setbacks?

Debbie Bell stated no, we could not find a record dogs I believe those were built before the courthouse fire.

Brian Haren asked if all of the activity surrounding that stop order represent any kind of condition?

Debbie Bell stated No, that's just something for you to be aware of as part of the review, they will not get any kind of permits until they resolve those issues and they're aware of that and talk with the EMD.

Brian Haren confirmed the approval is without conditions.

Debbie Bell stated yes.

*Anita Davis made a motion to approve Petition No. A-838-23 Variance to Section 110-137. R-40 (d) (6), to reduce the side yard setback from 30 feet to 14 feet to allow existing detached accessory structure (garage) to remain on flag lot per Sec. 110-106. Bill Beckwith seconded the motion. The motion passed 5-0.*

6. **Petition No. A-839-23, Parker Wright and Roxana Wright, Owner, request the following:**
- 1) Variance to Sec. 110-125. A-R, (d) (4) a. 2., to reduce the front yard setback from 100 feet to 32 feet to allow existing accessory structure to remain.**
  - 2) Variance to Sec. 110-125. A-R, (d) (2) to reduce the lot width from 250 feet to 216 feet to allow for existing accessory structure to remain.**
  - 3) Variance to Sec. 110-125. A-R, (d) (6) to reduce the side yard setback from 50 feet to 25 feet to allow existing accessory structure (Conex). The subject property is located in Land Lot 3 of the 3<sup>rd</sup> District and fronts on Mask Road.**

Debbie Bell stated this is a similar situation where someone purchased a property and a previous owner had built, in this case a barn, without a permit. It's in the setbacks. It currently consists of two flag lots. She stated the barn straddles the two lots. She added one of the things that the owner is planning to do is combine these two lots so that the structure will be contained on one lot but that will reduce the amount of the variance requested for lot with that building line. She stated it will still only measure 216 feet across. She stated flag lots are always a little tricky to deal with. They have some steeper Topo down at the bottom of the lot and some buffers and setbacks related to the lake. She displayed the survey to show the measurements and distances. She stated Mask Road is currently an unpaved road. She pointed out the barn and the conex shipping container used for storage. She stated the request is to retain both structures in their present location. It is staff's opinion that the property does present a unique situation because of the shape and the topography. The barn was built about six years ago and a non conformance is not the result of the current property owners actions. She stated it is staff's opinion that the variances should be granted for the permanently constructed barn and that the shipping container which is a mobile structure by nature should not be the subject of a variance and can be relocated to a compliance site on a lot. She continued, staff recommends conditional approval as follows for the barn:

1. Variance to Sec. 110-125.(d)(2). Lot width – to reduce the lot width (at building line) from 250 feet to 216 feet to allow an existing accessory structure (a barn) to remain.
2. Variance to Sec. 110-125.(d)(4)a.2. Front yard setback – to reduce the front yard setback from 100 feet to 42 feet to allow existing an accessory structure (a barn) to remain.
3. Variance to Sec. 110-125.(d)(6). Side yard setback – to reduce the side yard setback from 50 feet to 47 feet to allow existing an accessory structure (a barn) to remain.

She stated, if this request is approved, staff recommends the following conditions of approval:

1. Lots 9 and 10 will be combined into a single parcel, within 90 days, as represented by the proposed recombination plat prepared by W.D. Gray, and submitted as part of the application package.
2. Obtain a building permit for the barn.
3. The conex/shipping container, which is allowed as a farm outbuilding in the A-R Zoning District, shall be moved within 90 days to an area of the lot that complies with all normal building setbacks and lot width requirements.

Chairman Tate asked if the petitioner was present.

Parker Wright introduced himself and stated he is the petitioner in this issue. He stated he submitted some papers, closing documents that indicate that the previous owner didn't properly disclose that this was not a permitted structure. He stated he started out just trying to get electricity into the structure so he can have a little shop. He stated he follows in the footsteps of the previous petition that a lot of these things were not disclosed properly. And he had no idea that he wasn't exercising due diligence by closing the real estate transaction a year and a half ago. He stated he appreciated the Board hearing this petition. He thanked the employees of the county who has have been categorically very helpful and supportive. He also thanked a neighbor who came to support this petition. He stated he appreciated the time and effort that has gone into this submittal.

Chairman Tate asked if there was anyone to speak in support of the petition.

Kevin McFarland spoke in support. He stated he's come to the Board before to get some permissions to keep our buildings and to get everything straight and get our permits and CO. He continued that he drives by this residence, sometimes two or three times a day. And he's never thought twice about it being too close to the road. He stated it's in very good taste what was done and what they've done since. He stated they've only improved the property. He applauded that Mr. Wright wants to improve even further with electricity. He asked that the Board support this property owner in their petition.

Chairman Tate asked if there were any other comments in support or in opposition. There were none.

Bill Beckwith asked if Mr. Wright agreed to the conditions?

Mr. Wright stated yes. He stated his neighbor has expressed interest in possibly buying guides, which would be fine with me. He stated he currently doesn't have much use for it. It was just there. He stated he's trying to reduce expenses as much as possible because he's retiring and that's my prediction just leave it there.

Chairman Tate asked if there were any further questions or comments. There were none. He asked for a motion.

***Brian Haren made a motion to approve Petition No. A-839-23:***

- 1. Variance to Sec. 110-125.(d)(2). Lot width – to reduce the lot width (at building line) from 250 feet to 216 feet to allow an existing accessory structure (a barn) to remain.***
- 2. Variance to Sec. 110-125.(d)(4)a.2. Front yard setback – to reduce the front yard setback from 100 feet to 42 feet to allow existing an accessory structure (a barn) to remain.***
- 3. Variance to Sec. 110-125.(d)(6). Side yard setback – to reduce the side yard setback from 50 feet to 47 feet to allow existing an accessory structure (a barn) to remain.***

***With Conditions:***

- 1. Lots 9 and 10 will be combined into a single parcel, within 90 days, as represented by the proposed recombination plat prepared by W.D. Gray, and submitted as part of the application package.***
- 2. Obtain a building permit for the barn.***
- 3. The conex/shipping container, which is allowed as a farm outbuilding in the A-R Zoning District, shall be moved within 90 days to an area of the lot that complies with all normal building setbacks and lot width requirements.***

***Bill Beckwith seconded the motion. The motion carried 5-0.***

- 7. Petition No. A-840-23, NWE18, LLC, Owner and Adam Kaye, Attorney/Agent, request the following: Appeal to Sec. 110-207. - Appeals. and Sec. 110-242. - Powers and duties. Appeal the decision of the Zoning administrator/director of Planning & Zoning with regard to interpretation, administration and enforcement. The subject property is located in Land Lot 126 of the 5<sup>th</sup> District and fronts on Georgia Highway 54 W.**

Debbie Bell stated this is an appeal of the email she sent to him in conjunction with the zoning verification letter. She stated when they send a zoning verification letter it's simply verifying the zoning and they send along with that the chapter for that particular zoning district that lists the permitted uses and the conditional uses that are allowed in that zoning district. She stated it gives the dimensional requirements. She continued that's typically what they send with a zoning verification. She stated they are not approving a specific project, they're just stating that it is zoned O-I and they send that chapter with it. She stated the appeal is specific to her email to him. In that she said that she does not believe that this is listed as a permitted use in O-I. As a substance abuse detox facility. She stated that she said "a zoning verification letter is attached along with the sections for the O-I zoning district and the transportation corridor overlay. However, I think that a substance abuse treatment center is significantly different than a hospice use that was the previous use on the site, and that it is not listed as a permitted use in the O-I zoning district." She stated following that discussion, they're following up and they've

taken to Planning Commission, adding the definition for a substance abuse treatment facility or drug abuse treatment facility. She stated they've taken that definition to Planning Commission and it will be going to the Board of Commissioners on the 22<sup>nd</sup> of this month to add that as a specific listed use and then to follow up adding that as a conditional use in the O-I zoning district. She stated at this present time it is not specifically listed.

Chairman Tate asked if the petitioner was present.

Rick Lindsey introduced himself and stated he is representing the petitioner. He stated he's here along with two other attorneys, Adam Kay and Steven Jones. He stated Adam will be presenting some of the more technical parts of our petition this evening. He stated he heard Ms. Bell talk about the email. That is what we're here about this evening. He asked Attorney Cox, do I need to submit the email separately? He stated it's attached as part of the petition is exhibit a copy of the email?

Attorney Cox said she's obtained a copy of the email.

Mr. Lindsey continued, as Ms. Bell said, the appeal is from the email and not from the zoning verification letter. As Ms. Bell stated, she received a request from Adam Kaye for the zoning verification that the use of a substance abuse detox facility was appropriate for tax parcel property numbers 0522-007, which is the property we're here about this evening. And Ms. Bell's response was that she thought that the substance abuse treatment facilities center was significantly different from the hospice use, which was a very last use of the property. And so the words are very important here, we're talking about a substance abuse detox facility, which is an acute substance abuse facility, not a sub acute or some type of residential facility for drug treatment. So it's very, very important. He stated, the verification letter they don't have a problem with, it's the email and the kind of mixing of words that is problematic and the reason for our appeal. He stated he believes the evidence will show this evening that there really was either a miscommunication, or misunderstanding or maybe both that brings us here. While it appears to me that staff is trying to help out by adding the addition of this drug treatment facility or something. He stated when you read the definition, that is for a residential facility, and that is not what this is about. This is, as I said, a acute substance, medical detox treatment facility. He stated these are patients that are going to go in and they're going to stay for just a few days, two to five days, who are in severe medical problems. They've gotten to go into withdrawal and maybe an overdose. He stated, in this facility with doctors and nurses and other medically trained staff, it is not a residential facility. He stated the center will be staffed 24 hours a day by medically trained personnel. The patients will be in the facility only for a short period of time, like I said two to five days until they can be safely transferred to other facilities, the residential treatment facilities. The services provided by the medical detox center follow clearly within the current definition of hospital and of care homes that are included in the current zoning ordinance. He stated both hospitals and care homes are allowed in the O-I or office institutional zoning district. And the property in question is O-I. He stated he has certified copies of the county's zoning ordinance as recently amended. He stated he'll submit that at the end of the presentation. He continued, simple question here for the board is does an

acute medical detox facility meet the current definitions of hospital and of a care home? The evidence will show that it does. And as such it is an appropriate use for the property under the current O-I zoning. He stated, he'd like for Mr. Kaye to come up and talk more about the difference between a medical detox facility and residential facilities and ongoing matters and the treatment facilities that are available for addressing substance abuse. He stated he will go ahead and tender the certified copies of the ordinance as amended.

Adam Kaye introduced himself and stated he is a lifelong resident of Georgia. He stated, he's an attorney, husband, son, brother. He stated, hopefully in the next three to four weeks, he'll be a father. He added, most importantly, he is a man in long term recovery from a substance use disorder. He stated the reason he says most importantly before that last one is because without his recovery, he would have none of the other blessings in his life. He referenced his PowerPoint presentation and stated this is the property in question. Again, it's on highway 54. It's miles east of Piedmont Fayette hospital, it's about two tenths of a mile west of the Walgreens at the intersection of Gingercake Road. If you look at the picture on the left here, the entryway is to the left side of the picture on the left, there are offices, a large intake waiting room to the left side of the building and a kitchenette area as well. And then going towards the right there are 12 patient rooms, each with an interior handicap accessible bathroom. He stated, if you look at a picture on the right, that's an aerial view of the property to the south of the property is just about 18 acres of wooded area. He stated, across the street is about 30 acres of wooded area. And just about everything around the property is actually within the city limits of Fayetteville for whatever that's worth the property was carved out of the city limits. Property again is the proposed use of the facility. So again, this is for acute medical detox facility for people experiencing physical withdrawal from alcohol, prescription medication and illicit substances. And this is the very first step in getting a patient through the initial period of acute withdrawal symptoms which, depending on the substance use can be fatal if not monitored under medical supervision. He stated, the length of stay, as Rick mentioned, is dependent upon medical necessity, but it's typically two to five days. And this facility will be staffed by MDs, licensed nurses and other medical professionals. He continued, in terms of licensure, the facility will be licensed by the Georgia Department of Community Health and it will be recognized as what is referred to as a crisis stabilization unit or CSU. This is a type of hospital under state regulations. He continued, the way that CSU is are defined under state regulations, and you can see that at tab one in the binder but it's essentially a facility treating substance abuse and mental health crisis services 24 hours a day, seven days a week providing brief intensive services. The closest CSU to where we are now is actually to the southwest and Meriwether counties are about two counties over and it's just about an hour away, but the facilities very similar to about 10,000 square feet of a standalone facility. He stated, you may hear the county trying to refer to this facility as what the state refers to as a residential sub acute detox program. But there are actually two key differences between a crisis stabilization unit and a residential sub acute detox program, the first being the type of symptoms treated so crisis stabilization units treat acute symptoms, that's going to be everything from people at high risk of seizures, tremors, hallucinations, even rapid heart rate, hypertension, nausea and vomiting. Whereas subacute would be things like sleep disturbances, fatigue, prolonged muscle aches, those are sort of the lingering symptoms. And then the treatment setting is the second

key difference. He stated crisis stabilization takes place in a hospital setting or care home, like the picture suggests, whereas a residential subacute facility, as its name suggests, is more of a residential setting. And the county acknowledged that we are treating acute symptoms if you look at tab three of your binder. He stated, in the April 20th Planning Commission meeting, Ms. Cox recognized that the proposed facility is an acute care facility and she even recognize that the O-I district wouldn't be appropriate for this type of facility. In terms of the continuum of care, that's a term often used in the recovery industry that talks about when someone first comes in for treatment to the point where they are fully reintegrated back into society, which is certainly the goal. So medical detox is the first step. And again, that is the level of care that is being proposed for the facility in question. So again, two to five days staffed by medical professionals in a medical setting. He stated, these patients are medical inpatients so they're not doing much more than eating, sleeping, laying in bed, most of the day dreaming watching TV. From there, they would go on to residential treatment. That's where as Ms. Bell reference the proposed text amendment. This is for residential drug treatment. He continued, that's more of your typical when you hear of someone going off to rehab as the 30 to 90 day type of treatment facility. And that's more of a campus setting where they would have individual therapy, group therapy, some free time, recreational time and grid, they're going to be for a longer period of time. From there, they would hopefully go on to an outpatient program where they could go for a few hours a day, several days a week while they're hopefully going to school or work for the rest of the day. And while someone's in an outpatient program, they could be living in what's referred to as a sober living house where it could look like a regular house or apartment or with additional accountability measures in place. Maybe they have a curfew, you have random drug testing, put in additional type of accountability while they're going through this program. He stated he would show some pictures. He referenced his pictures and stated, these sorts of facilities. So medical detox facility. Again, it's a medical facility. He stated the two pictures at the top are pictures of medical detox facilities. The picture on the top right is actually the facility on highway 54. He stated, this picture was taken while it was hospice, and the rooms will look almost identical as a detox facility. The two pictures on the bottom are from Piedmont Fayette hospital. The picture on the bottom left is from the maternity wing. Just to give you an idea, you know, that's what a hospital room looks like if you're going to stay there for a few days. So to be a little bit more comfortable than the picture on the right, which is an emergency room bed which as we stand here currently today in Fayette County, the only place you can get detox services is the emergency room at Piedmont Fayette hospital. If you're detoxing and they refer to it as treat and street. He stated, you go in there for detox as soon as you're done, you're back on the street. And chances are you're going to be back in the emergency room if you need care again, because there's no as I mentioned continuum of care where there's a plan to get you to the next level. residential treatment. As you can see, it's more of a campus type of field. So the picture on the left is a facility in North Georgia. He stated, there are athletic fields, a basketball court, that's not something that a medical inpatient is going to be doing at a detox facility, but someone with sub acute symptoms, you know, muscle aches, sleep disturbances, it might be different person like that to run around. That's another key difference between acute symptoms sub acute symptoms. And then the picture on the right everything from the gymnasium on the left side of the picture to the dormitories on the top right, that's all part of the campus facility. And then outpatient facility. So this picture on the



left, this is McIntosh trail, it's about a mile south of here on Bradley Road. That's an outpatient facility. So people who go there during the day, maybe half an hour or a few hours of individual and group therapy is a picture on the right, that is not inside this building. But just to give you an idea of group therapy, therapy type of room that people would go to and this would be no different than if you go for like a psychiatry or therapist appointment. He concluded, it would be a facility like this, in sleeping here you go there during the day for outpatient services. He stated, and at this point, I'd like to turn it back to Rick who will take us through some of the legal nuances.

Rick Lindsey stated The Fayette County's zoning ordinance section 110-3 defines hospital as any institution receiving inpatients providing staff 24 hour emergency care facility and authorized under state law to render medical, surgical and neuropsychological care. The term hospital includes a sanitarium with an approved certificate of need from the state health claim agency for the treatment and care to respond to mental illness. He stated, describing what the medical detox is in hospital as defined in the current zoning ordinance. The medical detox center will receive patients and will provide medical staff 24 hours a day, will handle emergency care if you will be properly authorized under state law. He stated, the O-I district also permits a convalescent Center and the zoning ordinance doesn't define convalescent center but it does define a care home as a convalescent center nursing home rest home, home for the aged, assisted living facility or similar use established and operated on a profit or nonprofit basis to provide lodging and where meals and or domiciliary care for aged, infirm chronically ill or convalescent persons. The medical detox center will provide lodging and meals for a short period of time for those patients recovering from sickness. He stated there's no zoning decision or zoning action is going to be made by the county for this proposed use and medical detox center clearly falls within the definition of both hospital and care home. And both, as I said are permitted uses on the property as currently zoned. And since there is no zoning decision, the Zoning Procedures Act does not apply. Revisions dealing with the halfway houses roadway to the rehabilitation centers and facilities of treatment do not apply in this matter. If they did, then there would be a requirement for public hearings at a minimum of six month wait before the zoning decision could be made. Neither of those are required in the current request. He stated, Georgia law defines zoning decision as a final legislative action, which results in a.) new adoption of the zoning board. We're not requesting that. B.) the adoption of amendment to the zoning ordinance which changes the text of the zoning ordinance. We're not requesting that. The adoption as an amendment to the zoning ordinance which rezone the property from one zoning classification to another again, and that is not the request. The adoption of an amendment to a zoning ordinance by municipal local government which zones property to be annexed into the municipal. That's not here. And the grant of the permit relating to the special use property that is also not a request. He stated, the language of the Zoning Procedures Act and the definitions of zoning decisions are clear. And this matter not subject to interpretation has been said many times on the court, the legislature said what it meant and meant what it said and therefore the Zoning Procedures Act does not apply and the ordinances of a county are held to the same standard as they are written. He continued, in the definition of hospital and care home permit the proposed use. He concluded, to summarize, the property located at 1008 highway 54 West is currently zoned O-I.. Hospitals and convalescent centers

are permitted uses in that zoning district, the proposed acute medical detox facility that's warily within both definitions of hospital and care home. And then Zoning Procedures Act doesn't apply because no zoning decision is being made. In summary, again, the law supports this use. He stated he believes the commissioners are in support of this. We had emails from Eric Maxwell speaking very favorably with this. And I believe we have a number of people in the audience who came tonight wanted to be here to show support for our request. And if I may, those who are here in supporting this request, and since there's so many we have limited time today, just raise your hand, let us know. Honestly the community is in support of this and as Adam said, there's a need for this. Unfortunately, we have substance abuse problems in this country. Those are not going away. The pandemic proved to be a source of aggravation for substance abuse and to have a facility like this in our community where we can send individuals who need acute help at a time of crisis is something that we should be supporting. And again, we believe and leave this loss will support us that the current definitions occurrence of the ordinance of Fayette County minutes and allows this requested us.

Allison Cox introduced herself and stated she is representing the County's position and Debbie's decision for final determination and what's being appealed and frame what's going on today, because we're here only to decide whether to uphold or overturn the decision made by Ms. Bell, and her April 5, email and her April 6, zoning letter. And in order to make that decision, and she had only a very limited amount of information, most of what has come up here today was not available to her at the time the decisions made. So please bear that in mind as we work through this, and we'll introduce what she had to make her decision. And should we decide to overturn it, I would say that it would need to be remanded back to her for reconsideration. But that's the issue tonight, I did want to make a small rebuttal that my recognition that O-I the proper place for this use, doesn't mean it's there. It just means I agree that that's where it belongs. And currently, we are working on text amendments to include it. That would be the only change that we're talking about in the Zoning Procedures Act for any facility for the treatment of drug dependency, not just a residential facility. She stated, I would argue that Ms. Bell applied the provisions of our zoning ordinance properly to the information that she had available. And I'm going to call her up here and ask her what she had and how she went through the process to make her decision.

Attorney Cox swore in Deborah Bell.

Attorney Cox stated, I want to start with the actual letter of appeal that was filed on May 3<sup>rd</sup> by Mr. Kaye. And I will introduce a certified document, I'll introduce that into the record. Can you just read to me what we're appealing?

Deborah Bell stated, this letter shall serve as a notice of appeal on behalf of wolf acquisitions LLC, the appellant of your determination and your April 5, 2023, email and the zoning confirmation letter. The Fayette County tax parcel 0522-007 that a substance abuse treatment center is not listed as a permitted use in O-I zoning district.

Attorney Cox asked so what is your understanding of the proceedings? What are we here to do?

Debbie Bell stated this is an appeal to my statement that a substance abuse treatment center is not currently listed as a permitted use in the O-I district.

Attorney Cox stated she had a copy of the email thread and asked Debbie Bell if it was a copy of email certified?

Debbie Bell stated this is a copy of the email as well as the attachments that accompany the email which were the zoning verification letter, an information form, just like property evaluation, it restates the zoning, the zoning chapter for the that's applicable to the parcel and also the chapter four Section 110-142 for O-I office institutional and the Section 110-173, which is the transportation corridor overlay. Those are the pertinent chapters that apply to this parcel.

Attorney Cox stated she would hand Debbie a copy and introduce one into evidence. She then asked in the email thread can you tell me what the original request was? The March 21st request by Mr. Kaye?

Debbie Bell read the email sent to her. "Can you please let me know what is needed in order to get a zoning verification letter from Fayette County? I have a client looking for a zoning verification letter with regard to tax parcel number 0522 007. The client is looking to possibly use the property for substance abuse detox facility subject to the applicable licenses and approvals from the Georgia Department of Community Health." She continued, then the next day he followed up with one more thought. She read, "Ms. Bell as a follow up to my previous email based on my review of the zoning code, I believe that proposed use will be permissible as either a care home convalescent Center and or nursing home or hospital in accordance with section 110-169. But please confirm." We followed with some additional correspondence, I advised that I was researching his question and would reach back out to him and then I provided him with that zoning verification letter that you have in the package.

Attorney Cox asked did you provide them your verification letter?

Debbie Bell stated yes.

Attorney Cox stated the appeal is of an email. Did you just did you read that email? That's part of this email thread?

Debbie Bell stated yes with the letter in the attachment. She stated, I replied "Adam a zoning verification letter is attach along with the sections for the O-I zoning district and the transportation corridor overlay. However, I think that a substance abuse treatment center is significantly different than a hospice use and it is not listed as a permitted use in or zoning district.

Attorney Cox asked, can you tell me what a zoning verification letter does? What is the purpose?

Debbie Bell stated the purpose of the zoning verification letter is solely to verify what zoning district applies to a particular parcel. She stated, we typically send out that letter along with the relevant chapter that contains the uses permitted uses conditional uses and dimensional requirements from the zoning ordinance.

Attorney Cox stated, so this email thread that you just read into the record, was there anything outside of this that you use to make your decision as to your email?

Debbie Bell stated I did review the definitions for care home, which is as a convalescent center, typically for the infirm or aged. And then also for hospital, which is typically not somewhere where someone goes for detoxification, they might go to the emergency room and then they're transferred to a detox center and the definition. She read the definition of care home, a convalescent center nursing home rest home home for the ages, assisted aged, assisted living facility or similar use established operated on a profit or nonprofit basis to provide lodging and or meals and/or domiciliary care for aged, infirm, chronically ill, or convalescent persons. She stated, that to me implies a long term residential use, as opposed to a temporary detox facility to use.

Attorney Cox asked if there was any other information provided by Mr. Kaye?

Debbie Bell stated no, this was the only conversation was this email request that I had from him. He did not provide any additional information.

Attorney Cox stated when making your decision, we didn't have all of this documentation on the facility and the pictures. None of that was there?

Debbie Bell stated no.

Attorney Cox stated I am now going to introduce this is a certified copy of the code, but it's just O-I district. So is that okay, or do we just want to stick with what we have?

Rick Lindsey stated they have the whole thing.

Attorney Cox stated, I'm going to ask her is a substance abuse detox facility listed there as per permitted use in O-I?

Debbie Bell stated no.

Attorney Cox asked is it listed as a conditional use?

Debbie Bell stated no.

Attorney Cox stated, we had a suggestion that the facility is a hospital. Do you need to look at those conditional uses to tell me is a hospital permitted use in O-I?

Debbie Bell stated yes, a hospital is not a permitted use in O-I It is a conditional use in O-I, meaning that there's some special criteria attached to it.

Attorney Cox asked can you tell me the difference between a permitted and a conditional use?

Debbie Bell stated permitted uses are uses by right and so someone can come in and operate a business or conduct a use in that particular zoning district without having to meet any other criteria. And a conditional use has usually a few specific criteria that a property must meet. It might be setback or specific parking requirement or specific parcel size. Those are common conditions for a conditional use.

Attorney Cox stated so we know it's not permitted use. It's a conditional use in O-I to be a hospital. Can you read those conditions to me?

Debbie Bell stated a hospital allowed in C-C, C-H, O-I, and Z-R zoning districts the minimum lot size is 10 acres shall only set you shall only be permitted on a lot which runs on a major arterial.

Attorney Cox stated, I think I can stop you there. Can you tell me what the lot size of this parcel is?

Debbie Bell stated it's approximately 3.1 acres.

Attorney Cox asked can this exist as a conditional use?

Debbie Bell stated a hospital would not be allowed on this parcel because it doesn't meet the minimum lot size.

Attorney Cox stated so then we're going to need to the care home. And we've already said that the idea of a care home here it's a home with a list of several different kinds of homes, but home implies residency, lodging for permanent or semi permanent basis. All of those things require residency. We've heard this facility described as a maximum of two to five days any residency would be transferred off base once a patient is stabilized. So any idea that lodging or rooming is provided is only ancillary to the actual use or service on site, which is hospitalization and treatment for the weak withdrawal symptoms. She asked, is a personal care home a permitted use?

Debbie Bell stated it is not a permitted use in O-I.

Attorney Cox asked is it a conditional use?

Debbie Bell stated it is a conditional use in O-I.

Attorney Cox asked does this particular facility meet the conditions?

Debbie Bell stated at present this particular facility doesn't meet all of the conditional uses, it does meet the minimum lot size which the requirement is three acres and it fronts on a major thoroughfare. The current facility does not meet all of the buffer requirements. There is a side yard buffer requirement of 50 feet to which the 50 foot side or setback must be added. So it doesn't meet that requirement at present.

Attorney Cox asked so at present they can't operate?

Debbie Bell stated not without some further steps.

Attorney Cox stated nothing about Ms. Bell's decision was arbitrary or not informed by the code on point, she had very little information to go on. As my first, I believe it was an April 12 interaction that I had with counsel, that gave me an idea of what this facility really was. Ms. Bell didn't have the benefit of any of that at the time on her decision, which is under appeal today. This is not a hearing to decide whether or not this isn't a good use. Everyone agrees it's a good use. We're working as quickly as we can to get it into the code, because it is a detoxification facility. And under state law, it need only be a facility it has the element of being residential. It's not a portion of the Zoning Procedures Act that we're trying to remain compliant with. We are working as fast as we can to the make it happen. That's not an issue. In summary, we've gone over Ms. Bell's decision she strongly supported under the facts that she had available to her and the code sections that we have applicable here, strongly support the decision that she made. In addition, we've talked about whether it's a hospital which this parcel can never qualify as a hospital. It's three acres, not 10. That is not something that we would even very currently it can't even qualify as a personal care home. But Ms Bell's decision to say it isn't a care home hospice, or any of a number of other facilities in that use of homes was the idea it's not home. It's a service rendered during withdrawal. So the residency is only ancillary. Again, I would restate that we're only here to talk about whether she made a good decision, uphold her decision or overturn her decision. And if you do overturn her decision, perhaps you remand it back for her to consider with all of this new evidence. But at the time she made her decision, she didn't have most of what was presented to you tonight.

Adam Kaye stated I feel that the county is wordsmithing us a little bit, I just wanted to say that I have personally spoken with four of the five county commissioners who unequivocally support this use. And the use of this property for this to use. The prior use of the property was hospice, which is not a word used in the code, but the Ms. Bell can look and say, okay, it fits in this category, care home, whatever, and allows it to be used. And so if people can go to this property under medical supervision to die, I would hope that the board would think people can go to this property under medical supervision to get well.

Rick Lindsey stated I certainly don't want the board to believe that we're being critical of Ms. Bell that is not intended this is just the procedure. As I said very early on in my presentation, I do believe this is a result of in this understanding this communication. But under the current definitions, a medical detox facility is meets the definitions of hospital and care home, whether or not the variances would be needed. It's just like, if you did for the prior two matters that were for you, we could come before the board and ask for variance for the 50 feet or whatever. So again, we would submit that Ms. Bell interpretation was incorrect. And the code requires that the Board of Zoning Appeals either affirms or reverses it doesn't give the option of remand.

Marsha Hopkins had a couple of questions. She stated, this isn't to the merits of what you're proposing, it's really just to reconcile some language that I'm not too clear about. So in your initial presentation, you talked about this being a crisis stabilization unit, and subject to approval from the Department of Health, and also that it's a hospital. So I'm a little confused, because I actually thought that the DHDD, the Department of Developmental Health and Disabilities, that crisis stabilization units were under their Aegis. And if that so then I, I thought that they had some language in their regulations that clearly stated that a crisis stabilization unit is not a hospital, and couldn't hold itself out as one. The disconnect from me is whether or not that pertains only to maybe reimbursement with federal state funds. And if that's so, what are you proposing, that's different from that, that can align for me that notion of you can't hold yourself out as a hospital.

Adam Kaye stated, to start the definition of the hospital that Fayette County has a zoning code, and then the definition of a hospital that the Georgia regs have, are slightly different. If you go to the first tab of the binder, I will acknowledge that it's a little bit confusing, but on the second page where the first flag is, is where it's first highlighted, it says the term private facility means any hospital facility that's a proprietary hospital. He stated, so this would be privately in some proprietary hospital then there's the definition of crisis stabilization unit. And then if you go into the next page where it's highlighted, the department may designate as emergency receiving evaluatoin treatment facility, any private facility or any such portion of a community mental health and substance use program which complies with the standards for a CSU within the state of Georgia at the request of, or with the consent of the governing officers such facilities. So I acknowledge that it's a little bit confusing, but it's basically saying the department may designate an ERET, any private hospital that complies with the standards for crisis stabilization unit.

Marsha Hopkins asked would the permission is for that require certificate need?

Adam Kaye stated yes it does require a certificate of need.

Marsha Hopkins asked how so?

Adam Kaye stated in the appeal pack, and I apologize, I don't know which exhibit it is. But it makes clear that inpatient substance use treatment programs and treat acute symptoms require certificates of need.

Marsha Hopkins asked how many beds are you proposing?

Adam Kaye stated it's a 12 room facility. So that would be a maximum of 24 beds. And I know that there are some hospital regulations on hospitals have a minimum number of beds that's higher than 24. And that's where I noticed that the regulations are a little bit confusing. That refers to crisis stabilization units as hospitals in some instances. And certainly not all crisis stabilization units have 50 beds. He continued it's just one of those things where Fayette County's definition of a hospital and the state's definition of a hospital or a little bit different. I know that probably doesn't help you much.

Marsha Hopkins stated I'm trying to keep in mind what we're here to do, where it goes after that, is subject to approval and denial at the state level for whatever you're proposing, I was trying to get the notion of not holding yourself out as the hospital. When that's what you're saying you are, for purposes of this, and I get that.

Chairman Tate stated I think the rest of the board is clear on this, but just a clarification. The real purpose of this meeting tonight is to determine whether or not we would uphold the decision that was made by Deborah Bell or whether or not we would overrule and should we overrule, then that means that it would go back to her for reconsideration.

Attorney Cox stated I'm here in my capacity to represent Deborah so I'm going to refrain in my response out of an abundance of caution.

Chairman Tate asked Deborah Bell if she could say anything in regards to the clarification?

Deborah Bell stated it's my understanding your interpretation is the correct interpretation. This is not regarding a permit issuance or acceptance of an application or anything like that.

Steve Jones stated to your question about what the purpose of this meeting is. Purpose of this meeting is to review Ms. Bell's decision. You're not cabined to look at Ms Bell's decision at the time that she made it. That's why your code provides you with a public hearing. So that you can accept evidence and so you can hear everything that was proposed for you today. And then you can make the determination whether or not that decision was right, based on the evidence that you've heard, had the decision been cabined to or isolated to the facts that was before Ms. Bell when she made her decision. You would have a public hearing. Your decision here under your code is to affirm or reverse.

Attorney Cox stated Mr. Jones has entered an [inaudible] for the petitioner and to take everything with a grain of salt.



Mr. Jones continued your options today are to affirm or reverse, not to remand and not to look at it in isolation based on what Ms. Bell had in consideration at the time that she made the decision. I've worked a lot with Ms. Bell here and elsewhere. She has a lot on her plate and has a lot to consider. We're not speaking ill, what she did or how she did it. We're saying when you look at the totality of the evidence that's presented to you tonight, there's one clear decision as this use, under your definitions is a hospital or a convalescent center or care home as those terms are used. And you make that decision based on what you've heard tonight. Oh, that clarifies everything.

Chairman Tate stated they've received a lot of information and heard strong arguments from both sides.

Bill Beckwith asked if the Planning Commission has modified the ordinance and recommended to the Board of Commissioners?

Debbie Bell stated we presented a definition for substance abuse treatment facility to planning commission as a as a definition, and that they recommended approval and forwarded that to the Board of Commissioners. We're presenting that to the BOC on June 22. And then following that approval, that'll be followed by an amendment to add as a conditional use to the O-I zoning district.

Bill Beckwith asked is there another any other zoning category that allows subjects abuse or detox facility besides?

Debbie Bell stated not at present. It's not a defined use in the county as a standalone use. So it isn't listed in any of our zoning districts.

Marsha Hopkins stated she's still not clear on the conditional 10 acre piece of this. Is there anything else you can add?

Debbie Bell stated that's simply that if someone wants to build a hospital, assuming they have all the other approvals handled, that they would have to find a parcel that has 10 acres for a hospital. That's just the minimum lot size required for it. So this wouldn't meet the criteria for a conditional use as a hospital. So we did create that a use we haven't added a conditional use format, when we have it added as a conditional use it will have its own set of conditions. But I wouldn't anticipate that it would require 10 acres.

Steve Jones stated this is a textual interpretation of your zoning woodenness. Although we're looking at a specific parcel, this is about whether or not posed use meets the definition of hospital or care center slash convalescent center under your ordinance. It's not whether this parcel qualifies for that use although we are looking at a specific parcel. Your job tonight is to determine whether or not pose use meets one or both of those definitions. The subject property that the applicant is looking at if it does not comply with one of those conditional use requirements. Specifically to board member Hopkins pointed out the minimum acreage

requirement, it could seek a variance Alternatively, it could combine with the adjacent parcels to meet that minimum requirement.

Attorney Cox asked Mr. Jones if he was representing the petitioner?

Mr. Jones stated I am.

Attorney Cox asked does he have time reserved for further presentation.

Mr. Jones stated we do. But also you'll know that in our work objections follow the application, we objected to the time limitation, because this is a quasi-judicial hearing, in which the applicant needs to be afforded due process and the time limitation of 20 minutes does not afford that kind of opportunity to do so. Secondly, with the burden of proof here, entitles us to respond.

Attorney Cox stated please take note that Mr. Jones is here representing the petitioner. All he could say is representative that side, his framing of the issue, isn't what we're here to do tonight from the county's point of view.

Bill Beckwith stated it seems the petitioner has exceeded his allowed time with these two additional presentations from Mr. Jones.

Chairman Tate asked if there any apprehension on board members for us to be able to actually arrive at a decision now or something that you feel you would need additional time to consider?

Brian Haren stated I personally don't need any additional time. Regardless of everything that was said. I'm reading what brought us to this meeting this evening. That was to make a decision on whether or not the decision of Ms. Bell was proper at the time, given the information she had. I believe it was. He stated, we're just here to make a very narrow decision. Did she make the right decision based on the existing zoning? And with the information she had at her disposal at the time she made a decision. I believe she did. I think everybody understand we're kind of walking our way towards this facility being permitted. But tonight here as I see it, we're just making a decision on whether or not Ms. Bell made the correct decision at the time she made it with the information she had available. I think you're going to get what you want. I think you're going to get there. That's just my opinion. But I believe you are going to eventually see this. We just have to let the process work through. I came here off of the Planning Zoning Commission, and I understand how they work through things and they're going to make a decision and then they're going to make a recommendation yes or no to the county commissioners who are going to make their decision. I'd say let's let that process work its way out. That's why it exists. You know, this is again, we're here to make a very narrow decision. He stated, I would support denying this appeal.

*Brian Haren made a motion to affirm the decision of the Zoning administrator/director of Planning & Zoning with regard to interpretation, administration and enforcement. Bill Beckwith 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. Bill Beckwith seconded the motion. The motion passed 5-0.*

The meeting adjourned at 8:31 pm.

ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY

  
\_\_\_\_\_  
JOHN TATE, CHAIRMAN

  
\_\_\_\_\_  
CHELSIE BOYNTON, ZBA SECRETARY

