

# Meeting Minutes 11/27/23

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on November 27, 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:** Debbie Bell, Planning and Zoning Director  
Deborah Sims, Zoning Administrator  
Christina Barker, Planning and Zoning Coordinator  
E. Allison Ivey Cox, County Attorney

1. Call to Order.
2. Pledge of Allegiance.
3. Approval of Agenda.  
*Brian Haren made a motion to approve the agenda. Bill Beckwith seconded the motion. The motion carried 5-0.*
4. Consideration of the Minutes of the Meeting held on September 25, 2023.  
*John Tate made a motion to approve the minutes of the meeting held on September 25, 2023. Marsha Hopkins seconded the motion. The motion carried 5-0.*

## PUBLIC HEARING

5. Consideration of the Fayette County Zoning Board of Appeals 2024 Calendar.  
*John Tate made a motion to approve the Fayette County Zoning Board of Appeals 2024 Calendar. Anita Davis seconded the motion. The motion carried 5-0.* Deborah Bell introduced the formal presentation of the 2024 Calendar. There was a brief discussion at a former meeting, so this is the formal presentation for consideration of 2024 dates.
6. Petition No. A-844-23 - Variance to Sec. 110-93, requesting to reduce the setback for septic drain field lines.  
*John Tate made a motion to approve. Bill Beckwith seconded the motion. The motion passed 5-0.*  
Deborah Bell presents the staff report for petition A-844-23 which is a request to reduce the required setback for septic tanks and drain field lines as required in Sec. 110-93 from 25 feet to 5 feet for the location of septic drain lines. This is located at 1552 Highway 85 South in Fayetteville. Zoning is C-H. This location is the old U.S. Station and has been in commercial use since the 60's. The property has been paved for a long time and was at one time an old commercial truck stop.

A significant portion of the property is paved and as a result, it has been a challenge to find appropriate soils to provide for the septic field and the backup field. So, you can see that it's an isolated commercial parcel surrounded by A-R and R-70 and the land use in the area is residential. There aren't any significant environmental features on this property such as streams or wetlands. Ms. Bell displays an old aerial whereby the old building and the old gas canopy have already been demolished. They started some of their site preparatory work. They have a land disturbance permit. The area in question is highlighted and should include a 25' buffer along the property lines adjacent to A-R and R-70 properties. Ms. Bell displays the original landscape plan which was approved when the land disturbance package was underway.

Staff is recommending the landscaping be flip-flopped if the field is in the lower area, some of the sloped area should be landscaped and it might be needed as a backup field area in the future at which time landscaping could be provided in the old field area if they need to put septic replacement fields in this location. Ms. Bell showed a picture of the proposed paving and shows a picture of the proposed store with a drive-around detention and the proposed septic tank located in the back with fields going to the north and south. The same property owner owns the property to the north so there is no objection from that property owner. Ms. Bell states she did receive a call from a resident down to the south and after some discussion and a casual phone conversation about the request he didn't have an objection at that time. Ms. Bell reminded him that he was welcome to come to the meeting. Staff recommends conditional approval of the request to reduce the setback for the septic drain field lines subject to the following 1) The approved buffer planting should be planted between the back of the curb and the septic drain field area to provide the buffer by required by Sec. 110-144 (6) to provide the buffer per the attached landscape plan. This is a flip-flop of some of the landscaping. Any area where existing vegetation was proposed to provide the buffer shall also be planted if disturbed. Staff shall also coordinate with Environmental Health to coordinate that there is no conflict with the septic system itself.

John Tate asked if anyone was there to speak on behalf of the petitioners. Neal Brown with All Span Builders representing the Green Oil project comes forward to speak. First of all, he thanks the Planning & Zoning department for all of their patience. This is their fourth variance, but to save face they didn't know about the soil conditions when they applied for the other two. He thinks that everything has been covered and they need approval for another variance concerning expanding the field lines for the septic system to be adequate for the development. Also, thanks to Bonnie at Environmental Health for help with this project. We are all in agreement to make the changes to the landscape plan and Mr. Brown explains that it is a weird property. You have A-R, the neighbor to the south is here, the piece in the middle is commercial and then the one to the north is residential which is owned by another company of Green Oil. All that said, there are 4 properties out there with property lines through the asphalt. This plan is to remove all the old asphalt to the property lines anyway so the variance to the Average Joe you won't

know the difference that there are some more field lines to these landscape areas and so that is it in a nutshell. Thanks for your time, patience, and help and we think this is the last variance.

John Tate asks the audience if there is anyone there to speak in support of this petition. John Tate asks if anyone is there to speak in opposition to this petition. We will see if any board members have any questions or comments. Brian Haren asks if the owner they spoke with was the owner of the R-70 property. Ms. Bell clarified that the person she spoke with was the A-R property. Mr. Haren asks if anyone has spoken to the owner of the R-70 property. Ms. Bell stated that this was the only call she received. Brian Haren asks if there is no reuse of the existing drain field. The system won't tie into what's already in the ground. Bill Beckwith asked if it was necessary to remove the underground storage tanks and replace them. Mr. Brown replied that all the old tanks, the existing store, and the canopy were part of the original demolition plan. All the suitable testing, engineering reports, and such are all on file. John Tate asks what the final property that is going to be placed on this property. What is its final use?

Neal Brown replies that he understands it is going to be Whitewater AAMCO and that is what it has been tagged and permitted under in SAGES. When Neal spoke with Leslie today, they had one more comment from the Fire Marshall to deal with the commercial hood. That procedure will continue but in order to answer your question the project is separated into 3 tenants: a convenience store, and two other tenants that haven't been decided yet. Mr. Brown is not the real estate department and not sure if they have put the final ink on the deal, but they hope that the final drive-through is a Dunkin Donuts. Mr. Brown is speaking out of turn and is just the general contractor and the builder, but that is the plan and then there will be one other tenant. Brian Haren asked if this were approved would they agree to the conditions. Neal Brown said, "Oh, yes sir!"

John Tate says it appears that there is not any real issue with any of the board members or himself and on that motion, he made a motion that they approve Petition No. A-844-23 - Variance to Sec. 110-93, requesting to reduce the setback for septic drain field lines. The motion was seconded by Bill Beckwith.

Bell requested to clarify that the actual variance is 110-144 (d) (6) which is the buffer and landscape requirements. The drain field lines have a requirement that they can be within 5 feet of the property line, so the actual variance request is 110-144 (d)(6).

Tate amends the motion stating it is under conditional approval to state that with regard to Petition No. A-844-23 we move that we approve the variance to 110-144 (d)(6) and with respect to Sec. 110-93 which is to reduce the setback for septic drain field lines. The approval is based on the conditions that were outlined by the Department of Planning and Zoning and is subject to the petitioner's agreement with the particular conditions. That is the basis of the motion to

approve the variance. John Tate made a motion to approve. Marsha Hopkins seconded the motion. The motion passed 5-0 unanimously.

7. Petition No. A-845-23 - Variance to Sec. 110-149 (d)(6)(c), requesting to reduce the setback for the side yard from 15 feet to 13'2". Reduce side yard by 1'10" to allow for new construction to remain.

***John Tate made a motion to approve. Anita Davis seconded the motion. The motion passed 5-0.***

Deborah Bell introduces Petition No. A-845-23 - Variance to Sec. 110-149 (d)(6)(c), requesting to reduce the setback for the side yard from 15 feet to 13'2" to allow a newly constructed addition to remain. The property is located at 125 Monarch Drive in Peachtree City. The zoning is PUD-PRD, and the applicant is requesting the following per Sec. 110-149 (d)(6)(c) requesting to reduce the side yard building setback in the PUD-PRD zoning district from 15 feet to 13'2". The staff recommendation – it is the opinion of the staff that the parcel does not have unique or limiting factors, however, the encroachment is not very large, and it is unlikely that it would have a negative impact on the adjoining property.

John Tate asks if there is anyone here to speak on behalf of the petitioner. Nick McCullough is here to speak on behalf of the Bennett family. He is the general contractor on the job. Mr. McCullough said they built an addition for the family, and we pulled from the side property line, on the right side, where the owner had marked for them and either his concrete guys went over the line, or the line marked was wrong and we made a mistake and poured it over the 15-foot setback.

John Tate asks if anyone is wishing to speak in support of the petition. John Tate asks if anyone wants to speak in opposition to the petition. Thank you and we'll see if any board member wishes to make any statement or comment. Marsha Hopkins asks if the variance is not granted what would the petitioner have to do? Debbie Bell states that they would have to demolish what was built and rebuild within the boundary if it were not approved, or they could negotiate with the neighbor and perhaps do a property line shift to provide enough space. Those are really the only two options if the variance is not approved.

Brian Haren asked if construction of this type no longer requires a slab survey. Ms. Bell states that if an addition or accessory structure is built within 2 feet of a setback, then a foundation survey is required. It is up to the builder to decide whether to proceed with vertical construction prior to that because there aren't any inspection stop points between pouring the slab and starting with your vertical framing where we can place a hold. Brian Haren asks if there was not a foundation survey done. Ms. Deborah Sims says this is the foundation survey that was done. They have to do that for all residential areas, houses, and guesthouses. So, this is the foundation survey that was done and with that closeness of being within 2 feet of a setback, that is one of the holds that get put on in the building permit process. If they propose to build within 2 feet of a building setback, then they have to submit that foundation survey following the requirements on the foundation survey checklist before they can get their framing inspection.

Brian Haren says, "I am confused, what went wrong?"

Sims stated, "No, sir. This is the foundation survey, right here and we made special arrangements for Mr. McCullough to continue without passing this point with the understanding that if it is not approved, he is just going to have to tear it down. That is the only option. Mr. McCullough did ask for a special extension to have the approved foundation survey at the end instead of normally at the framing inspection. Ms. Sims states that it was her understanding that they have an elderly family member that they need to move in, so they are very optimistic that you will approve so they can get that family member in as soon as possible."

Brian Haren states that it is his opinion that we seem to have a rash of these, at least in the last 6 months, we have had something like this every month. Personally, Mr. Haren can't support this request, because it's just that somebody wasn't paying attention and he believes it is part of their job to enforce you doing your due diligence and you were in too much of a hurry and he is sorry but this is not our job. Because, sorry your guys poured improperly, but that is your responsibility and not ours to retroactively fix things from an administrative standpoint.

Nick McCullough requests to speak and is granted permission. He states that he has been doing this for more than 30 years and we have only had 2 instances where something like this happened, it wasn't done on purpose, and it was a mistake. He is asking for your leniency on this matter as he can't afford to tear this down. Mr. Haren understands that but has the property owner approached the neighbor and tried to work out a deal whereby we adjust the property line? Mr. McCullough stated that their neighbor does not wish to sell them any of their property and if they did, it would reduce what their setbacks would be. Mr. Haren asked if the petitioner did speak with the neighbor. Mr. McCullough stated that they did speak with the neighbor, and he is not willing to do so.

Marsha Hopkins asks to tag on a little bit. We have seen a lot of these recently and even though we are only talking about a foot and a half, it is a real struggle because we have to adhere to the criteria for the variance, but then she recalls other meetings where they are called to inject an element of reasonableness into the evaluation and how does that shift the balance of this. She is just bringing this up for any further discussion that anybody would want to have or will have. It is just a tough call.

John Tate states that he is thinking along the same lines because certainly, our function is to determine whether the criteria for granting the variance has been met. Certainly, when we do this, we try to look at it from the standpoint of what created the problem. Was it something that was done in error or something that was done by the homeowner or whomever that could have been avoided? Then sometimes we have to look at the cost. That is where the reasonableness comes into play and we try to take a look at the situation where we don't want to cause

the homeowner any additional hardship if there is any way to avoid it. Especially if this is not something that was directly created by the particular homeowner. That brings us back to where we were, and Brian makes a point certainly. We can't look at things other than what is in front of us to be used as a determining factor.

Bill Beckwith asks the staff, "Granted that there have been some cases like this. Is there anything you all could do to stop this situation?"

Bell states, "I have suggested that we put in for a requirement for a box check before the slab is poured. In other words, the builder would have the surveyor out before they pour. Once they get batter boards or stakes and string up for the location of the foundation or the footer and have a survey done at that point and time to verify that it wouldn't encroach. I was told by Environmental Management that had gotten some negative feedback from the builders previously because if they did that there would be situations where if it were a property that had to have a minimum finished floor elevation and an elevation certificate. They would then have to have a surveyor out an additional time to establish the elevation certificate and they didn't think that was a good idea, but I still think it would resolve a lot of these encroachment issues that are unintentional."

Bill Beckwith says he sees what Brian said, but it seems as if this is the situation. If they did have to tear that building down, builders would get the point. If you instituted the box survey as you said, that might be a way to keep this from happening so often.

Bell stated that it is just a method she has seen used in other municipalities that seems to be pretty effective.

Bill Beckwith asks, "Can you institute that? Who institutes that?"

Bell says that it would be an inner departmental discussion because several departments are involved in the permitting process – Environmental Management, Building Safety, Planning & Zoning and four or five departments are involved as the project proceeds through. Primarily, it is Building Safety. I don't think Building Safety would object, but it would be adding an inspection step. It would put a stop to their building progress until they had those survey points done, but that would eliminate the need for the survey at this point. On properties that had floodplains, if they had a minimum finished floor elevation requirement because they had an adjacent floodplain or an adjacent stormwater structure, they would still have to have a surveyor out after it was poured to establish the elevation.

Bill Beckwith stated that his opinion is that you should do that. At least, start the conversation or institute it yourself. We are tired of this as Brian mentioned. It could be at some point that someone will have to tear down a building.

John Tate expresses that at this point we are at a point of uncertainty.

McCullough says I understand what you are saying, but to try to use me as an example when it was a mistake, and we try to do what's right. I build homes every day in Fayette County and build additions every day in Fayette County. We don't have this type of trouble. It was a mistake! The property line was marked by the homeowner, and we poured from that, and it was wrong. I was wrong. My mistake is that I should have had a surveyor come out and look at it. And as far as the box checks are concerned, I think it is a good idea that would stop this sort of thing, but a lot of surveyors don't want to survey anything unless it is already their pour. They don't want to survey stakes or even a box check. I get pushback from those guys on doing this, but this was a mistake and I wish you would just help us out because you won't have any problems from us in the future. It was not done on purpose. It would be a financial ruination for me.

Brian Haren asked, "So you said the property owner marked the line?"

McCullough says, "Yes, sir."

Haren asks if the property owner was there.

McCullough says no he is not, he is handicapped, and it is hard for him to get here.

Haren asks, "When you went out to set the forms for the pour, how was the property line marked?"

McCullough states, "He pointed out where the property line was if you look at his neighbor's home. It's on the other side of the fence. Where his neighbor's yard and his yard meet, that's where he pointed out the line for us and we staked it from there.

It is an encroachment on the setback, but it is very minor. You know I am a rule follower myself. You know I live in Fayette County; my kids go to school here; I want things to be the way they are supposed to be but sometimes mistakes that are made are not intentional. This is something that was done by mistake, I would have never done it on purpose. If I had known, I could have done something different. It was not done on purpose.

Haren says he has brought up another issue that the homeowner told me where the property line was, and I built off of that. That needs to be addressed too. I will say this. And the fact that the property owner is the one who told you where to line was the only thing that could get me to change my mind on this, but still... You know. Construction of this type and this cost, I would make darn sure as a developer that if I was putting something up it was right.

Technology malfunction at 7:44 pm – no audio available, so remaining minutes are based on staff's notes.

Haren says that we could require this to be torn down but wishes to have flexibility with the homeowner and builder as this was an admitted mistake.

Davis stated that we are taking a chance here.

Bill Beckwith says we ought to approve and gives another example from the ZBA.

John Tate says he leans towards approval and makes a motion to approve.

8. Petition No. A-846-23 - Variance to Sec. 110-125 (d)(6) requesting to reduce the setback for building from 50' to 30' to allow a 26 x 50 garage to be built on the south side of the property. Variance amount of 40%.

***Brian Haren made a motion to table the Petition until January 22, 2024, Zoning Board of Appeals meeting. Bill Beckwith seconded the motion. The motion passed 5-0.***

Bell reviews the staff report for 130 Winn Way. Bob Barnard, the builder, states that due to the slope and the setback of the property, they are requesting a variance to construct a new detached garage.

Marsha Hopkins asks what is the additional space in the detached garage going to be used for.

The petitioner states that he is looking to have a detached garage with an area for him to store collectibles as well as a detached apartment.

Brian Haren asked if they had any other places where they could put the garage. Bill Beckwith states this is a large amount to forgive, and it looks like he can put this detached garage perhaps somewhere else on the property.

John Tate says that it is not acceptable to ask for a variance just because you want to and that it is "not convenient" to follow the building ordinance.

Anita Davis asks the petitioner if he considered perhaps a door on the side of the home so they could put the detached garage in a location that does not require the variance and therefore does not encroach on the setback.

Bob Barnard states says that the owner does not wish to have a door going out to the outside from his bedroom.

Bill Beckwith states that we are not in a position to bargain with the ordinance.

John Tate said we would like to reconsider before we make a vote, do we want to table?

Bill Beckwith said he thinks that tabling may be appropriate.

Debbie Bell says that the meeting will be in January due to the advertising requirements. The meeting date would be January 22nd.

The owner stated that with regard to the variance, it came up on Facebook and no one objected.

Bill Beckwith said that we normally would like neighbors to talk to each other and not just through Facebook. Brian Haren said that their intent is to table and give the petitioner time to find a better location on the property for the detached garage addition.

John Tate said that was his thinking as well.

Allison Cox stated that we needed time to advertise per the ZBA process.

Debbie Bell stated that they needed a 30-45-day window and time to properly advertise.

9. Petition No. A-847-23 - Variance to Sec. 110-137 (d)(5), requesting to reduce the setback for rear yard from 30' to 5'.

***Brian Haren made a motion to approve. Marsha Hopkins seconded. Anita Davis voted not to approve. The motion passed 4-1.***



Debbie Bell read the staff report regarding the property located at 104 Hammock Bay Drive, Fayetteville. The petitioner applied for a rear yard setback reduction from 30' to 5'.

Kimberly Waldrop spoke and explained the reasons that the variance requested was needed for a swimming pool.

John Tate requested any additional information.

Bill Beckwith asked about the septic system.

Brian Haren asked if the setback requirements were not large enough. Did she discuss it with her neighbor?

Kimberly Waldrop stated that she had not because there was a sign in her yard and one by the church.

Marsha Hopkins asked why she needed to go from a 30' setback to a 5'.

Kim Waldrop stated that Ms. Bell had made sure she requested enough so she didn't have to go back and ask for more space.

10. Petition No. A-848-23 - Variance to Sec. 110-142. O-I, (f) (6), to reduce the side yard buffer, required when an O-I zoning district abuts a Residential or A-R zoning district, from 30 feet to 15 feet.

***Brian Haren made a motion to approve. Anita Davis seconded. The motion passed 5-0.***

Debbie Bell read the staff report for the property located at 1336 Hwy 54, Fayetteville requesting a reduced side yard buffer from 30' to 15'.

Woody Gallaway spoke on behalf of the petitioner. He explained the need for the request due to the layout of the parcel.

Bill Beckwith asked if they had looked at the area to the south.

Woody Gallaway said that they did and there was a significant drop off to the south.

Bill Beckwith asked about the curb cuts.

John Tate asked if they were agreeable to the staff recommendations and conditions.

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Chairman Tate asked is there a motion to adjourn?

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

The meeting adjourned at 8:40pm.

**ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY**

  
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**JOHN TATE, CHAIRMAN**

  
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**DEBORAH BELL, PLANNING & ZONING DIRECTOR**