

# Minutes 12/16/2024

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on December 16, 2024, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

**MEMBERS PRESENT:** Bill Beckwith, Chairman  
Brian Haren, Vice-Chairman  
Marsha Hopkins  
John Tate  
Anita Davis

**STAFF PRESENT:** Debbie Bell, Planning and Zoning Director  
Deborah Sims, Zoning Administrator  
E. Allison Ivey Cox, County Attorney  
Maria Binns, Secretary

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1. Call to Order. *Chairman Bill Beckwith called the December 16, 2024, meeting to order at 7:00 pm.*
2. Pledge of Allegiance. *Chairman Bill Beckwith offered the invocation and led the audience in the Pledge of Allegiance.*
3. Approval of Agenda. *Marsha Hopkins made a motion to approve the agenda. John Tate seconded it. The motion passed 5-0.*
4. Consideration of the Minutes of the Meeting held on September 23, 2024. *Brian Haren made a motion to approve the minutes of the meeting held on September 23, 2024. John Tate seconded the motion. The motion carried 5-0.*

## PUBLIC HEARING

5. Consideration of Petition No. A-874-24 – Jean Samples, Owner, per Sec. 110-242 (h), request for an illegal lot to be deemed a nonconforming lot. The subject property is located in Land Lot 1118 of the 4<sup>th</sup> District and fronts Antioch Road and Lowery Drive.

Ms. Bell explained the owner Ms. Jean Samples had requested to withdraw this application at this time and asked the board for a vote to withdraw.

Chairman Bill Beckwith asked the board for a motion.

**WITHDRAWN BY PETITIONER.** *Deborah Bell reported that Item #5, Petition No. A-874-24 on the agenda, had been withdrawn pursuant to the petitioner's request. Staff received an email withdrawing the petition and removing the agent authorization for Mr. Owen Miller on December 11, 2024. The petition was withdrawn from the agenda pursuant to the Petitioner's request, in an email*

***dated December 11, 2024, from owner Jean Samples. John Tate made a motion to ALLOW THE WITHDRAWAL of Petition A-874-24, Anita Davis seconded the motion. The motion carried 5-0.***

6. Consideration of Petition No. A-875-24 – Gayle M. Harp Trust, Owner, applicant is requesting a variance to reduce the front yard setback in the A-R zoning district from 100' to 83' per Sec. 110-125(d)(4)a.2. The subject property is located in Land Lot 167 of the 4<sup>th</sup> District and fronts Chappell Road.

Ms. Bell explained the house was built in 1948, prior to the paving of Chappell Road. There was no violation at the time of construction, so the structure is legal nonconforming. The variance is minor and unlikely to have a negative effect on any neighboring properties. Also stated the house is shown on a 1-acre parcel on the Tax Map, the 1-acre parcel was not created by deed or plat. The designation of the 1-acre area was simply drawn in by the Tax Assessor's Office when the property was placed under a Conservation Use Agreement. We have spoken with the Tax Assessor's Office, and the erroneous parcel lines will be removed so the house sits on nineteen acres. She explained the maps and said the house is currently setback 83 feet of right of way.

Ms. Harp mentioned they purchased the land and plan to use it for their family to build a home, so they don't run into difficulties in the future.

Chairman Beckwith asked if anyone in the public was in favor of the petition.? No one responded, also he asked if anyone was in opposition.? But no one came to oppose. The chairman brought the item back to the board for discussion.

Chairman Beckwith mentioned that there are a lot of roads in the county that are paved now that weren't back in 1948 and setbacks were not in place at that time.

***John Tate made a motion to approve Petition No. A-875-24. Brian Haren seconded the motion, The motion passed 5-0.***

7. Consideration of Petition No. A-876-24 – Sheila Marie Wall, Owner, applicant is requesting the following: Per Sec. 110-137(d)(6), requesting to reduce the side yard setback in the R-40 zoning district from 15' to 12.3' to allow the replacement of a damaged garage. The subject property is located in Land Lot 168 of the 5<sup>th</sup> District and fronts Fox Hunt Court.

Ms. Bell introduced petition A-876-24 and stated the staff assessment is that the variance is minor and unlikely to have a negative effect on any neighboring properties. The house was constructed in 1977, prior to a requirement for foundation surveys. Staff noted the encroachment when the contractor applied for a building permit to reconstruct a damaged carport.

Chairman Bill Beckwith asked for the petitioner to come to the podium to speak.

Ms. Wall stated on April 10, the wind storm a large Pinetree slipped the entire carport in half, crashing her car and taking all the electricity out of the house, we had been in a hotel for seven months and we had moved to a temporary house until our house gets rebuild. This is the first home they had purchased.

Chairman Beckwith asked the audience if anyone was in favor of the petition.? Then he asked if anyone was in opposition.? With no responses, he brought the petition back to the board for discussion.

Chairman Beckwith asked the board if they had any questions if not to make a motion.

***Brian Haren made a motion to approve Petition No. A-876-24. Anita Davis seconded the motion, The motion passed 5-0.***

8. Consideration of Petition No. A-878-24 – Evans MT. Ventures, LLC, Owner, applicant is requesting an appeal to the decision of the Zoning Director regarding the legal status of Parcel 0517 119, per Sec. 110-242. – Powers and duties. (a) Appeals from the actions of the zoning administrator. The subject property is located in Land Lot 70 of the 5<sup>th</sup> District and fronts Highway 85 South.

Ms. Bell explained the petition A-878-24 and showed the maps where she explained the property was located just south of the Fayetteville city limits, at the intersection of Highway 85 and 92. This is the parcel south of Oreilly's auto parts. In October 2022, Mr. McWhirter contacted Zoning Director Debbie Bell regarding development of the parcel. Ms. Bell had some initial discussions about how an auto repair shop could be developed on the site and how it would be affected by the General State Route Overlay. His engineering firm sent a concept plan, and Ms. Bell noted that the parcel did not meet the width at building line criterion. She researched the history of the parcel and found out the parcel had been subdivided in 2011, the parcel that was created by this plat did not meet the dimensional requirements at the time of its recordation and it does not meet the current dimensional requirements for the C-H (Highway Commercial) Zoning District. Ms. Bell advised Mr. McWhirter of these findings and had several conversations since. On October 10, 2024, Mr. Rothman contacted Ms. Bell and requested a written determination regarding her determination of the status of the parcel. Ms. Bell responded on October 11, 2024, explaining her assessment of the parcel and determined that the parcel was an illegal lot because it did not meet the zoning criteria for the highway commercial district in the state right overlay, at the time it didn't meet the requirement for a lot with the building line of 125 feet in width at the building at the line.

Ms. Bell stated Mr. Rothman submitted an appeal of the decision of Ms. Bell, which is the case presented here. Mr. Rothman maintains that because the plat was recorded according to OCGA 15-6-67, also known as the Georgia Plat Act, this makes it a nonconforming lot.

Chairman Beckwith asked Ms. Bell if she made her decision based on the ordinances and effect at that time.

Ms. Bell responded yes; she reviewed what was in effect at that time.

Mr. Steve Rothman spoke in favor of the petition A-878-24 and handed over to the zoning coordinator documentation for the board, he stated he agreed with a lot of things Ms. Bell said and that his argument isn't simple that the lot is legal lot of record - grandfather lot as he called it. Are we a legal lot of record.? The current zoning ordinance says if you are a legal lot of record or grandfather then you can use the lot, in this case, the only concern raised is the lot width at the building line is not 125 feet; is it at the front but it narrows as you go back and so we can't get a variance to fix it and the land owner is stuck and cannot use.

Mr. Rothman mentioned that they are bringing this appeal because at the time that this was divided, they followed the county rules, he referred to the excerpts, hoping to drill in and not have to go into too many code sections. Ms. Bell and he looked at the zoning regulations – not the current ones as he stated because they didn't exist back in 2011.

Mr. Rothman explained that the reason where he is basing his appeal is the definition of legal lot of record where you have to be in compliance with the code, he read SEC. 8-502 County Subdivision Development Regulations, talked about (b) Recordation of Final or Minor S/D Plat- “No Final or Minor Subdivision Final plat should be recorded with the court of the superior court of Fayette county Georgia without that Plat first having been submitted to and approved by the Planning Commission” and then he referred to page five “The planning Commission approval is not required” for a plat or subdivision where no new streets or roads are created or no new utilities or no new sanitary sewer or approval of a septic tank is required, but it had to have a certification of a license surveyor. He states when this plat was recorded it did not require new stress, utilities improvements, septic or sewer approval.

Mr. Rothman stated when the plat was recorded, Sheila Studdard the clerk of the superior court put out a policy, she referred to the Plat Act but she said essentially “Now standing anything to the contrary above no approval should be required.” Mr. Rothman the owner did and followed the rules at the time then they should be allowed to go forward with the legal lot of record and all the rights to come with that.

Ms. Bell explained the List of all the Exhibits (from 1-23) found for this Petition A-878-24 which can all be found on the staff report for this petition. Ms.

Bell stated regarding Per Sec. 8-502 Development Regulations, although the approval of the Planning Commission was not required of a plat that did not create new streets, roads, or that required utility or septic improvements, it also provides that no subdivision shall be approved which does not conform with the Zoning Ordinance applicable to the land for which it is proposed. It was never submitted to staff for review and approval, and it need it infrastructure improvements as a separate lot and their own septic system, and she referred Exhibit 23 in 2022 they applied for a septic permit and establish a new septic system for O'Reilly's on their current lot where it sits and this lot it need it's owns septic infrastructure as an independent lot. The fact that it was recorded with the Clerck of Court does not conform status as a legal non-conforming lot, they do not review plats for compliance with ordinances, they record it things at presented to them under that plat act. Ms. Bell explained more Exhibits and completed staff finds that this does not meet the status as a non-conforming lot because it was not a lot of record that meet the requirements for the zoning ordinance referring to Sec. 110- 170.

Mr. Rothman stated he agreed to nearly everything Ms. Bell said, he spoke about O'Reilly's septic system which he just found out about just now and referred back to his previous exhibits.

Chairman Beckwith asked Mr. Rothman would it be a building on this property and would that building have a septic tank connection to the septic tank.?

Mr. Rothman responded yes to the first question and said he didn't know if either sewer or septic connections would be made.

Chairman Beckwith asked Ms. Bell is she knew if does connection to an existing septic tank is that a definition of an extension of utilities.?

Ms. Bell responded yes; it will be an extension, but the approval of septic connections will require a separate permit and is on septic system from the Department of Environmental Health.

Mr. Brian Haren asked if there is sewer available.?

Ms. Bell responded there is no sewer available there at this time.

Mr. Haren asked where is the septic for this development going to go.? Where is O'Reilly's' septic going.? and this is the corridor covered by the state route overlay. He mentions past situations about setbacks for the Gym's building south of this and also the Gas Station and on both occasions in particular the Gym asked for a variance where they were trying to push their parking out fifteen feet away, and we said no. Also, the gas station was pushing its way around and want it to put our signage where we thought it should go, and we said no. If this particular development for a couple of feet doesn't meet the same sticking requirement that we place in the other development requirements on this corridor in the immediate area whether is a legal or illegal lot, it does not matter, if it doesn't meet the

standards for this Highway 85 corridor overlay and we ruled on other developments sticking to the setbacks and the lot widths, he stated will be established with the other petitions.

Mr. John Tate added that even if this was a legal lot would it still fit the requirements on the overlay zoned.? He thanked Mr. Brian Haren for clearing some of the questions he had.

***Brian Haren made a motion to Uphold Petition No. A-878-24. Bill Beckwith seconded the motion, The motion passed 5-0.***

9. Consideration of the Fayette County Zoning Board of Appeals 2025 Calendar Schedule.

Ms. Bell explained the different regular and holiday dates.

Chairman Beckwith asked the board if anyone had any questions regarding the 2025 Zoning Board of Appeals Calendar.?

Mr. John Tate mentioned he was not going to be able to attend the January 27, 2025.

***John Tate made a motion to approve the 2025 Zoning Board of Appeals Calendar. Marsha Hopkins seconded the motion. The motion carried 5-0.***

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

*The meeting adjourned at 7:54 p.m.*

**ZONING BOARD OF APPEALS  
OF  
FAYETTE COUNTY**



**BILL BECKWITH, CHAIRMAN**



**DEBORAH BELL  
DIRECTOR, PLANNING & ZONING**