

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on June 28, 2004 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

**MEMBERS PRESENT:** David Bartosh, Chairman  
Ron Mabra, Vice-Chairman  
Bill Beckwith  
Tom Mahon  
Larry Blanks

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Aaron Wheeler, Director of Zoning/Zoning Administrator  
Bill McNally, County Attorney  
Delores Harrison, Zoning Technician  
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

**Welcome and Call to Order:**

Chairman Bartosh called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present. He confirmed with Attorney Bill McNally that public input was given at the previous public hearing and therefore the procedures of the public hearing would not be read.

Attorney McNally concurred.

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**1. Consideration of the Minutes of the meeting held on May 24, 2004.**

Bill Beckwith made the motion to approve the Minutes as circulated. Tom Mahon seconded the motion. The motion passed 4-1. Larry Blanks abstained from the voting due to be absent at the May 24th Public Hearing.

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**2. Consideration of Petition No. A-547-04, David C. and Janet E. Roberts, Owners, and Bradley D. Palmer of Slepian & Schwartz, LLC, Agent, request a 19 foot Variance to reduce the rear property line from a minimum of 30 feet to a minimum of 11 feet to allow the encroachment of an existing swimming pool and a 20.2 foot Variance to reduce the rear yard setback from a minimum of 30 feet to a minimum of 9.8 feet to allow the encroachment of an existing swimming pool pump shed. This property is located in Land Lot 18 of the 7th District, fronts on Farm Lane, and is zoned R-70.**

Attorney Brad Palmer of Slepian & Schwartz stated that he represented David and Janet Roberts, the petitioners. He advised that the Roberts had asked the homeowners who own the 150 foot unbuildable strip of property, however the property was inherited and the property owners are noncommittal so the Roberts are in the same position as last month. In summary, he commented that the Roberts had hired Clearwater Pools to build a pool in their back yard approximately four (4) years ago. He remarked that the Roberts relied on the contractor to construct the pool and get the proper permits. He confirmed that Clearwater Pools handled all of the permitted and the inspections with Fayette County. He said that the Roberts discovered that the pool was built too close to the rear property line which created a setback violation. He added that the pump and pumphouse were also in violation of the rear setback. He noted that no neighbors had complained nor had the Roberts been cited. He went on to say that the Roberts had requested the variance because if they sold the property they would have problems due to the encroachment. He reported that there is a special circumstance due to the way the property is situated. He pointed out that there is a strip of land behind the Roberts' property line which is approximately 150 feet wide which is adjacent to a

seldom traveled road which is adjacent to raw land which goes down to a lake. He noted that the Roberts' property is elevated and the rear of the property drops off approximately 15 feet so the pool is not visible from the road behind the Roberts' property nor from any of the neighbors' property. He added that the property owners to the rear of the Roberts' property had also given the Roberts permission to build the pool fence across the property line. He stressed that the public good is served by granting the variance and the encroachment is not harming anyone and there is no objection from the adjacent property owners to the rear of the Roberts' property. He also stressed that if the variance is not granted the only option is to relocate the pool which costs approximately \$50,000 in construction costs. He reiterated that the permits and the inspections were approved by the County and the Roberts relied on the County and their contractor. He confirmed that it would be a great hardship and cost to relocate the pool. He requested the Z.B.A. to take these items into consideration and grant the variance request.

Chairman Bartosh asked Larry Blanks if he needed further clarification since he was absent at the May Public Hearing.

Larry Blanks stated that he had read the Minutes, had rode by the property, and briefly looked at the photographs.

Chairman Bartosh asked Attorney Palmer to indicate the subject property on the aerial.

Mr. Blanks asked if the pool company was still in business.

Attorney Palmer replied that he was unsure.

Chairman Bartosh advised that it is not the County's responsibility to measure setbacks even if the County approves the permit.

Attorney McNally confirmed that the County inspects for construction, however it is not the County's duty to ensure that something is built on one's own property or within a setback.

Chairman Bartosh also confirmed that the duty falls on the homeowners.

Attorney McNally replied yes sir.

Chairman Bartosh asked if there were any further comments or questions.

Ron Mabra verified that Lee's Mill Farm Final Plat indicated a 30 foot rear yard setback in 1984 and the pool permit was issued per the Final Plat.

Robyn Wilson replied yes it was.

Mr. Mabra asked if a precedent would be set if this was looked at as a special situation.

Chairman Bartosh said he did not have a comment.

Tom Mahon made a motion to deny the petition. Chairman Bartosh seconded the motion.

Bill Beckwith said that he had run into a situation with construction on his own property when a neighbor was building a tennis court because the bulldozer was parked on his property. He remarked that when he had an addition constructed onto his existing house that he had a survey to ensure knowledge of his property lines. He stated that it is the homeowners responsibility to find out where things are when things are done on their own property and for him to know where his property lines are located so therefore, he would support the motion to deny the petition.

Mr. Blanks remarked that the homeowners contracted a professional and the homeowners assumes that the professional is doing the job correctly. He commented that denial of the variance would not serve the public good at all. He added that denial of the petition would place an undo hardship and unnecessary expense on the homeowners especially since the homeowners discovered the encroachment and turned the information over to the County. He said that the pool is not impacting any of the existing homes or homeowners and is not an eyesore to the community. He stressed that he did not see what good it would serve the community to require the pool to be demolished.

Tom Mahon stated that you can delegate authority but you can't delegate responsibility. He said that the homeowners are responsible and that he concurred with Mr. Beckwith. He added that since it is a self-induced hardship that he could not support the petition.

Chairman Bartosh remarked that the Z.B.A. has been known to grant relief , however in this particular case not only was the pool built very close to the rear property line but the slab encroaches onto the neighbor's property. He said he felt a deep precedent would be set if this particular variance was approved. He commented that he concurred with Mr. Beckwith and Mr. Mahon.

At this time, Chairman Bartosh called for the vote. The motion for denial was passed 4-1. Larry Blanks voted in opposition.

Chairman Bartosh made a motion grant the petitioners sixty (60) days to bring the property into compliance. Larry Blanks seconded the motion. The motion unanimously passed 5-0.

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Chairman Bartosh asked if there was any further business.

Aaron Wheeler advised that the July Public Hearing had been canceled due to the lack of applications.

Larry Blanks requested Staff utilize Map Quest for directions for each application and include a copy in the petition packages.

There being no further business, Larry Blanks made the motion to adjourn the meeting. Ron Mabra seconded the motion. The motion unanimously passed (5-0). The meeting adjourned at 7:30 P.M.

**ZONING BOARD OF APPEALS**  
**OF**  
**FAYETTE COUNTY**

Respectfully submitted by:

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**DAVID BARTOSH**  
**CHAIRMAN**

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**ROBYN S. WILSON**  
**SECRETARY**