

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on October 25, 2004 at 7:09 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: David Bartosh, Chairman
Bill Beckwith
Tom Mahon
Larry Blanks

MEMBERS ABSENT: Ron Mabra, Vice-Chairman

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

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.

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Aaron Wheeler read the procedures that would be followed for presentation and opposition for petitions.

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1. Consideration of the Minutes of the meeting held on September 27, 2004.

Larry Blanks made the motion to approve the Minutes as circulated. Bill Beckwith seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

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2. Consideration of Petition No. A-548-04, Darren and Angie Fitzwater, Owners, and Morningside Homes, LLC, Agent, request a 25 foot Variance to reduce the front yard setback from a minimum of 75 feet to a minimum of 50 feet to allow a single-family residence currently under construction to remain. This property is located in Land Lots 64 and 65 of the 5th District, fronts on Lester Road, and is zoned R-70.

Larry Singleton of Morningside Homes, thanked the Z.B.A. for allowing the petition to be tabled to allow time to work out an alternative solution.

Chairman Bartosh asked Mr. Singleton if he would like to proceed and advised that he would need three (3) affirmative votes.

Mr. Singleton stated that the Fitzwaters wanted to proceed. He advised that he had purchased Lot 4 and was planning to deed a 25 foot easement to the Fitzwaters but found out that this was not a solution as confirmed by Attorney McNally. He said that he made a mistake which he wanted to rectify from the beginning but it is not as much about Morningside Homes as it is the Fitzwaters because they spent a lot of time looking for land. He commented that they were very happy when they found this 3.5 acres off Lester Road and the great location which it was in. He remarked that they came to him with their plan and he drew it for them. He pointed out that if they had known exactly where the lot line was when the house was laid out, if the flags had been in the right location, if a tape had been pulled to locate the house within the setback requirements, and also to find the optimal location for the aesthetics of the house on the lot, the back yard they wanted to have, the tree

buffer between them and the neighbor, the constriction of the small building area because of the ravine and the limitation of the soils for a suitable septic system, a variance would have been requested because the house would have to be located 20-30 feet back which would drop it down in a hole and they would have lost their back yard or if moved to the right and back some on the high side is where the garage would have been located and almost all of the trees would have to have been removed. He said that these are some of the things unique about this lot and the ability to place the Fitzwaters home where it needed to be on the lot is why a variance is being requested. He commented that the request is within the intent of the ordinance due to the uniqueness of this location. He added that approval of a variance would not be detrimental to the community in any way. He thanked the Z.B.A. for the consideration.

Chairman Bartosh asked if there was anyone to speak in favor of the petition.

Darren Fitzwater, Owner, thanked the Z.B.A. for their consideration. He commented that the way that the house sits and the plan that a variance would have been necessary because the house would have been in a hole. He remarked that you would have walked out of the back of the house and you would have walked into a steep 14-15 foot downgrade. He added that they did not want to be on top of their neighbors and they wanted a tree buffer. He said that they were not in violation of the intent of the law because the house is located 490 feet off of the road over a hill. He noted that there was separation maintained between the house and the surrounding neighbors. He reported that the 25 foot lane purchased by the builder would maintain a 75 foot setback between Lot 2 and the house. He thanked the Z.B.A. for their consideration.

Philip Wallace of Morningside Homes thanked the Z.B.A. for the opportunity to speak. He stated that they did make a mistake but the house was placed in the optimal location because if it had been moved back it would have been in a hole and if moved to the side it would have eliminated the backup septic areas. He said that the mistake was an honest mistake and was not deliberate. He remarked that if the correct property line was flagged in the beginning that a variance would still have been sought even though the house is 490 feet from the road. He commented that prior to the last meeting they were asked to remedy the situation by purchasing the lot next door however the Fitzwaters do not want to incur anymore tax liability. He confirmed that they have three (3) options: the Fitzwaters purchase the lot or the builders purchase the house or the variance be approved. He said that they had prayed for the variance to be approved since it is so unique. He added that no one is being impacted. He confirmed that they never encroached on anyone else's property including the 25 foot strip which was purchased. He thanked the Z.B.A. for their time and consideration in granting the variance.

Chairman Bartosh asked if there was anyone to speak in opposition of the petition.

Judy Cunningham of 549 Lester Road, Lot 3, stated that she was unsure about how a variance would affect her property and she was concerned about her property. She said that she had her property surveyed which cost her \$550 and the only reason she had it surveyed was because she thought something was not right on the back corner of her property. She commented that she was unable to find her marker with the digging which was going on. She remarked that a six (6) foot marker with an orange flag was placed on her property line. She added that the surveyor dug down three (3) feet where her marker had been covered up. She confirmed that a silt fence was in place but was moved but the marker was visible, however no action was taken to have the subject property surveyed. She reported that at this time there was no house built nor basement poured so they were shortly into the process when they saw the marker because the silt fence was moved to the other side of the marker. She questioned what was the intentions of the builder due to the purchase of the adjacent lot. She asked if the Fitzwaters did not purchase the lot if the lot would be maintained by the builders or would it be sold and if so, where would the driveway be located because this would become an issue.

Chairman Bartosh asked Aaron Wheeler to address the driveway situation.

Mr. Wheeler advised that Lots 4, 5, and 6 share a common curb cut with a common driveway. He added that Lot 4 has 25 feet for their driveway.

Larry Blanks confirmed that if Lots 4 and 5 are combined then the property line will abut Ms. Cunningham's property.

Mr. Wheeler replied that Mr. Blanks was correct.

In rebuttal, Mr. Wallace said he would like to put the homeowner at ease because at no point was the property line crossed. He stated that he was unsure how her pin got covered up because they never had to go into that area at all. He confirmed that the silt fence was repaired after a storm.

Chairman Bartosh stated that it sounds like the neighbors need to communicate better and this would not be an item for the Z.B.A. to address. At this time, he closed the floor from public comments.

Tom Mahon made the motion to deny the petition. Chairman Bartosh seconded the motion for discussion purposes.

Mr. Mahon said that he made the motion to deny because this is a self induced hardship and there is a remedy. He added that approval would set a precedent.

Mr. Blanks said that this was an honest mistake and he sees no real damage it would do to anyone's property, however a 1/3 variance is tough to support. He stated that he was unable to support the variance since there is a remedy.

Bill Beckwith asked about the combination of the two (2) lots.

Mr. Blanks replied that if Lots 4 and 5 are combined to make one (1) lot then the entrance into Lot 4 becomes the entrance for the combined lot which would resolve the problem and the house would be located 76 feet from the new property line which would be a remedy.

Mr. Wallace asked if he could make a statement.

Chairman Bartosh advised that the floor was closed from public comments. He asked if the two (2) lots were combined would they have to be considered in a public hearing before the B.O.C.

Attorney McNally replied that a revised final plat could be approved administratively.

Chairman Bartosh asked if the lots were combined into one (1) lot that the value would not be the same as if it were two (2) lots.

Attorney McNally replied that this would be correct.

Mr. Beckwith concurred with the other Z.B.A. members. He said that the Z.B.A. had made hard decisions in the past but they always try to look at other options which can work. He explained that when a variance is approved it was granting the law to be broken. He added that it was an honest mistake but he could not support the variance especially since there is an option.

Chairman Bartosh stressed the importance of surveys being performed prior to construction. He said that the petitioners had stated that they would have needed a variance because it was more convenient to place the house where it is sitting now, however the Z.B.A. does not grant a variance based on convenience. He stated that some lots dictate the type house which can be constructed upon them. At this time, he called for the vote. The motion for denial passed 4-0. Ron Mabra was absent.

Chairman Bartoh made the motion to grant the petitioner the maximum of 30 days to bring the subject property into compliance. Tom Mahon seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

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October 25, 2004

3. **Consideration of Petition No. A-550-04, Charles M. and Judith R. Wood, Owners/Agents, request a 50 foot Variance to reduce the front yard setback from a minimum of 100 feet to a minimum of 50 feet and request a 10 foot Variance to reduce the north side yard setback from a minimum of 50 feet to a minimum of 40 feet to allow the construction of a single-family dwelling on a nonconforming lot of record. This property is located in Land Lot 120 of the 5th District, fronts on Callaway Road, and is zoned A-R.**

Charles Wood, Owner, thanked the Z.B.A. for their time. He stated that he and his wife had purchased a lot in February on Callaway Road. He described the lot as a unique property which is pie shaped with the front side curving inward with the curvature of the road. He confirmed that prior to purchasing the lot that they had a survey prepared at a cost of \$700.00. He said that a plat was prepared with the location of the house shown and an environmental survey was also prepared. He commented that the Zoning Staff reviewed the plat to ensure that the location of the house with a 50 foot front yard setback was permissible. He reported that Staff had said the setback was suitable so the property was purchased and the loan was applied for, however Staff says that this never happened which means he should have requested approval in writing. He confirmed that the approval was given prior to the present Zoning Administrator coming into office. He explained that they wanted to set the house perpendicular with the left side of the property because with the proposed location the back right hand corner of the house would be in the woods approximately 45 feet from the property line which will require the removal of more trees than anticipated. He added that the driveway would also be located back in the woods further. He stated that he was told that the subject property could possibly be rezoned but decided to approach the Z.B.A. first because they are ready to start building. He pointed out that the subject property abuts property zoned R-40 which permits a front yard setback of 60 feet which is ten (10) feet more than what is being requested. He commented that he was told that the 50 foot setback was not allowed because of the possibility of cars running off of the roadway coming into the house which is not possible due to a buffer of trees. He reported that while an overview was prepared there are three (3) houses in less than a mile from the subject property and 358 Callaway Road is only 35 feet from the right-of-way. He requested the Z.B.A. to grant what others in the area have since there are several on Callaway Road. He thanked the Z.B.A. for their time.

Chairman Bartosh asked if there was anyone to speak in favor of the petition. Hearing none and with no one present in the audience, there was no one to speak in opposition and no need for rebuttal so he closed the floor from public comments.

Larry Blanks verified that there were two (2) variances requested, one (1) for the front yard setback and one (1) for the side yard setback, however there are three (3) plats labeled "what we want", "what we will accept", and the one (1) approved by the Zoning Administrator.

Chairman Bartosh replied that the request was to reduce the front yard setback from a minimum of 100 feet to a minimum of 50 feet and to reduce the side yard setback from a minimum of 50 feet to a minimum of 40 feet.

Attorney McNally advised that both variances could be addressed in one (1) motion.

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

Chairman Bartosh stated that he did not take pleasure in a lot of the decisions which the Z.B.A. has to make and he is glad that this has not progressed any further than it has, however he did not want to set a precedent which will affect the law down the road. He said that the lot is not totally unbuildable but is more of a convenience of what the homeowner wants on the land but the land will accommodate the house in the required setbacks.

Tom Mahon concurred.

Larry Blanks said that a small variance is one thing but a 50% variance is difficult. He asked if the petition was denied but the property was rezoned to R-40 would they have to wait a year to reapply for a variance.

Attorney McNally replied that a variance would not be needed if they rezoned to R-40.

Mr. Blanks stated that the front yard setback for R-40 was 60 feet but they were requested a 50 foot front yard setback.

Attorney McNally reiterated that a variance would not be necessary if they rezoned to R-40.

Chairman Bartosh pointed out that on August 28, 2004, the Zoning Administrator approved a front yard setback reduction from 100 feet to 75 feet and the side yard setback from 50 feet to 40 feet which means the County made a reasonable attempt to allow the construction of the house. He asked if the petition was denied by the Z.B.A. would it make the variance approved by the Zoning Administrator null and void.

Attorney McNally replied no.

Mr. Beckwith confirmed that the house could be constructed with the administrative variance.

Chairman Bartosh replied yes at 75 feet but not the desired 50 foot which the petitioner is requesting.

At this time, Chairman Bartosh called for the vote. The motion for denial unanimously passed 4-0. Ron Mabra was absent.

Mr. Blanks thanked the petitioners for appearing before the Z.B.A. before the foundation was poured.

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Chairman Bartosh asked if there was any further business.

Aaron Wheeler advised that the Public Hearing scheduled for November 22, 2004 has been cancelled due to the lack of applications.

There being no further business, Tom Mahon made the motion to adjourn the meeting. Bill Beckwith seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent. The meeting adjourned at 7:59 P.M.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

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**DAVID BARTOSH
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**