

**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on May 19, 2003 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:** Kathy Zeitler, Director of Zoning/Zoning Administrator  
Dennis Davenport, Assistant 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.

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**1. Consideration of the Minutes of meeting held April 28, 2003.**

Larry Blanks made the motion to approve the Minutes as circulated. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

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Kathy Zeitler read the procedures that would be followed for presentation and opposition for petitions.

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**2. Consideration of Petition No. A-535-03, Harp's Crossing Baptist Church, Inc., Owner, and Foley Design Associates, Inc., Agent, request: 1) an Enlargement/Expansion of a Nonconforming Structure for a proposed Church sanctuary of 38,870 square feet; 2) a Variance to reduce the 299 proposed parking spaces from a minimum of 10' by 20' per space to a minimum of 9' by 18' per space; and 3) a Variance to increase the maximum building height from a maximum of 35 feet to a maximum of 67 feet (excluding steeple) to allow a proposed two-story church addition. This property is located in Land Lot 26 of the 5<sup>th</sup> District, fronts on Hwy. 92 South, Seay Road, Antioch Road, and Harp Road, and is zoned R-40.**

Chris Kacena of Foley Design Associates stated he was the Architect and Agent for Harp's Crossing Baptist Church. He proposed a 38,870 square foot two-story addition with a balcony in the sanctuary to the existing church. He advised that the addition would be linked to the existing church through two (2) points. He pointed out that the building would be one-story on the west side and two-story on the other side.

In regard to parking, Mr. Kacena corrected the request for all 299 proposed parking spaces to be reduced in size from the required 10 feet by 20 feet to 9 feet by 18 feet. He clarified that approximately half (150) of the proposed spaces will be 9 feet by 18 feet in order to blend in with the existing parking, and the other proposed parking spaces which will wrap around the new sanctuary footprint will be 9 feet by 20 feet.

In terms of the setbacks, Mr. Kacena stated that the hardship is the triangular shaped property bound by two (2) major rights-of-way, Hwy. 92 South and Harp Road. He noted that the right-of-way widths are 100 feet and 80 feet, and that the 75 foot nonconforming setback is prohibitive to the development of the site. He said that the net distance between the proposed addition and the nearest residential property line would not be less than 138 feet, and the intention is 100 feet, because the required front setback is 100 feet. He confirmed that the proposed structure will encroach into the nonconforming setback in three (3) areas.

In regard to the building height, Mr. Kacena remarked that the 35 foot height restriction is prohibitive in that it doesn't allow for a church of any magnitude to be built and structures of a religious nature are usually monumental and have a lot of space on the inside and would require more than 35 feet. He said that the construction type is of the sort that will not be conducive to fire and will fairly noncombustible and will be protected with a rated sprinkler throughout.

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

Jim Pace of Group VI stated he was the proposed contractor for the project. He clarified that one of the setback encroachments is an overhang used for a covered drop-off area from Hwy. 92 South and is not a part of the building structure itself. He added that there is an exterior stairway which also encroaches the setback from Harp Road.

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

Bob McElroy of Dawn Drive stated that Harp's Crossing Baptist Church is a good neighbor and they were part of an effort to protect the neighborhood from commercial development. However, he said that this meeting is not about this church but about Fayette County's standards and policies. He remarked that the right-of-way is public property but was used by the Petitioner to make the nonconforming setback of 75 feet seem larger and the proposed reductions seem justified. He commented that any reduction in the current setback is not appropriate in this residential area where existing homes far exceed the minimum setback requirements. He pointed out that the Overlay Zone for Hwy. 92 South requires that nonconforming structures be brought into compliance to the greatest extent practical and if any portion of the site design is changed, extended, or altered. He reported that the proposed expansion reduces the existing nonconforming setback from 75 feet to 62 feet along Hwy. 92 South and violates the intent of the Overlay Zone. He went on to say that the reason for height requirements in residential neighborhoods is to require building to be somewhat compatible with the residential environment and to prevent large buildings from overpowering existing homes. Additionally, he stressed that the intent was to protect the quality of life of County residents and to help adjacent and nearby homeowners protect their financial investment. He said that the 35 foot height requirement applies to all of the residential and nonresidential zoning districts. He stated that a request for a variance which essentially doubles the existing County wide standard for building height is simply not appropriate in this area of homes. Mr. McElroy remarked that a variance is intended to provide a property owner with relief from regulations which result in practical difficulty or unusual hardship. In this proposal, he commented that neither practical difficulty or unusual hardship have been justified. He reported that the proposal will have an adverse impact on the existing residential neighborhood and therefore the request for a reduction in setbacks and the increase in building height should be denied.

In rebuttal, Mr. Kacena stated that two (2) of the three(3) points of encroachment are not enclosed structures since one is a stairway and the other is a drop-off area, therefore there should be a little bit of leniency in terms of the rule being applied to those two points. He said that due to the right-of-ways which are on both sides of the subject property, more than 100 feet is observed in terms of its relationship to the nearest residential structure. He remarked that there are existing religious structures in Fayette County which are over 35 feet in height, including the existing building at 44 feet. He added that New Hope Baptist Church is approximately 60 feet or more in height so this is not the first time this has happened. He stressed that it puts a very significant restriction on religious structures which are conditional uses in residential areas, but it makes it difficult to build a church which can't be higher than 35 feet.

At this time, Chairman Bartosh closed the floor from public comments.

Larry Blanks made a motion to approve the enlargement/expansion of a nonconforming structure. Bill Beckwith seconded the motion.

Mr. Blanks said that the size is within reason and he saw no problem in granting the expansion. He added he saw no negatives in this situation.

Chairman Bartosh asked if the addition was approved at 38,870 but the reduced setbacks are not approved, would the Petitioner be allowed to relocate the addition to another part of the property, or was the Z.B.A. voting for this particular square footage to be located the precise point shown on the plan.

Attorney Davenport replied that the improvement of the enlargement, by definition, approves the encroachment on the setbacks as it is presented because it is part of the enlargement of the facility. He pointed out that the Z.B.A. has three (3) separate and different issues: (1) the building enlargement which includes and encompasses the encroachment of the setback, (2) building height, and (3) parking spaces. He advised that the existing structure is already nonconforming to the setback for churches, and approval of the enlargement as presented would allow them to go further into the setback.

Mr. Blanks announced that this brings a little different light on his understanding because now he does see a problem.

Mr. Beckwith said he had no additional comments.

Ron Mabra asked if the motion for approval of the 38,870 square feet also ties into the height variance because the addition is two-story.

Chairman Bartosh advised that the Z.B.A. is approving the footprint and the height will be a separate variance.

Mr. Kacena confirmed that the 38,870 square feet includes the second story.

Chairman Bartosh said that approval of the enlargement would allow the encroachments into the setbacks but still limit the building height to 35 feet unless the variance request to building height is approved.

Attorney Davenport concurred with Chairman Bartosh.

Tom Mahon objected to the enlargement since the required setback is 100 feet and the existing structure is at 75 feet. He expressed concern about safety issues with the high volume of traffic on a major state highway. He said that further encroachment into the setbacks sets a bad trend. He stated that the proposed addition could be redesigned so there would be no further encroachments into the setbacks and maintain the 75 foot existing setback which is 25 feet beyond the normal setback.

Mr. Kacena asked if the safety precautions would be applied to a drop-off area.

Mr. Mahon replied that if the drop-off or stairway is attached to and part of the structure then it would be considered an encroachment.

Chairman Bartosh expressed concern about the hazardous intersections and added that there are far too often accidents in this location. He said that the Z.B.A. would be setting a dangerous precedent by encroaching on not only a major highway that will be expanded in the future but also two (2) roads that are major thoroughfares and used as short cuts. He also expressed concern about sight distance and the overlay zone. He added that he understood why the church was being located as

proposed but there is ample land available which does not make the request a justifiable hardship.

Chairman Bartosh called for the vote. The motion was unanimously defeated 5-0.

Attorney Davenport advised that since the enlargement of the building was denied the request for a variance to building height is now a moot point, because if the church can't expand they can't build the building any higher.

Mr. Beckwith remarked that there may be another location on the site and asked if it would be more appropriate for the Z.B.A. to consider the building height request and grant it if appropriate for future development or modification of the existing church.

Attorney Davenport replied that the Z.B.A. could vote if they liked, however the church was asking for a building height variance for this structure contingent upon the proposed enlargement as presented, and the nonconforming structure can not be enlarged without permission from the Z.B.A. and that was denied tonight. As a legal point, he advised that it is moot because they do not have an approval from the Z.B.A. to enlarge the structure.

Mr. Kacena stated that he understood that denial meant the footprint was not acceptable but it could possibly be modified and still be 35 feet in height.

Attorney Davenport replied that this is a nonconforming structure and as such, it cannot be expanded in any way without approval by the Z.B.A. He said that if the Petitioner wanted to modify the structure by making it smaller, then that is a different issue, but to modify the structure to add to it would need approval by the Z.B.A. at a subsequent meeting.

Chairman Bartosh asked if the parking was also now a moot issue.

Attorney Davenport replied that the Petitioner could still add parking to their site, but the building height is a moot issue because the building expansion was denied.

Mr. Beckwith asked what was the time frame for resubmittal even if it involved another location for the proposed expansion.

Kathy Zeitler replied that the Zoning Ordinance required at least a 12 month waiting period before another request can be made for the same property.

Mr. Pace asked if the proposed addition was redesigned so it could comply with the 75 foot setback would that be acceptable to the Z.B.A.

Attorney Davenport advised that because the Z.B.A. had denied the expansion, the bar operates immediately which meant that the same type of relief could not be requested for 12 months.

Mr. Pace said that the difficulty was that the church had been working diligently for years to raise the money to build the addition, and the location selected is the only location on the site where the sanctuary can be built. He remarked that the drawings are virtually complete and he did not realize that it would stop the project for 12 months since the encroachments are so minor. He asked if there were any other options. He advised that there was a basement floor plus another story so it will be viewed as a one-story structure from Hwy. 92 South.

Chairman Bartosh advised that the Z.B.A. was presented with a variance request which was denied. He stated that it was their responsibility to research the laws including the overlay requirements. He said that the Z.B.A. was looking at the issue of setting a precedent. He added that it was not for the Z.B.A. to determine if they can build only in one spot on the site or not. He asked if there was any relief the Z.B.A. could grant the Petitioners as far as altering the 12 month waiting period.

Attorney Davenport clearly stated that when a request such as this to enlarge a nonconforming use of a structure is denied, the same relief cannot be requested for the same property for 12 months. He said he would characterize the relief being requested as permission to add to the existing building. He remarked that the number tonight was 38,870 square feet and if they came back with something less it is still an enlargement of the nonconforming use of the structure which is what was denied by the Z.B.A.

Mr. Beckwith asked what would happen if they requested a separate structure which was not connected to the existing structure.

Attorney Davenport replied that the use of the property is a church which is nonconforming because it of noncompliance with the Conditional Use setback requirements for a church use. He said that if a separate building were built, the use was still expanded. He added that the Zoning Ordinance does allow the Z.B.A. to rehear a request prior to the 12 month bar, at the discretion of the Z.B.A.

Mr. Beckwith asked what restrictions there would be for rehearing a request.

Attorney Davenport replied that the Z.B.A. would decide the restrictions. He advised the Z.B.A. that since they were faced with this issue for the first time tonight that they should probably discuss at their next meeting what they would look at, what are the triggering factors they would consider in rehearing a petition to keep the 12 month bar from operating, because what is decided will apply to each piece of property in Fayette County.

Mr. Beckwith asked if the Z.B.A. could be setting a precedent by rehearing the petition.

Attorney Davenport replied that the Z.B.A. definitely would be setting a precedent. He advised that the Z.B.A. needed to discuss what are the issues that are important factors for the Z.B.A. to look at to allow someone to be exempt from the 12 month bar. He said that if there are such factors out there then he did not see a problem talking about those factors, that if they should be present then that could prevent a Petitioner from waiting 12 months. He added that if there is something out there that it should be identified with particularity since it applies to every piece of property in Fayette County.

Keith Turner asked if he could address the Z.B.A.

Chairman Bartosh replied that he had closed the floor from public comments.

Mr. Turner stated that he was the Minister of Education and has served there for 18 years and may be able to give some history.

Chairman Bartosh said that the Z.B.A. needed to be extremely careful of what they do procedurally, which was the issue at hand since the vote had been made.

Mr. Blanks remarked that in past sessions the Z.B.A. had headed off some similar situations prior to the vote where the Z.B.A. verbally guided the Petitioner by offering to allow him to table and revise his application.

Chairman Bartosh asked if the vote could be rescinded.

Attorney Davenport replied that once the vote is taken, it is official action. He advised that to rescind the vote tonight would be setting a precedent to rescind a vote in the future.

Mr. Mahon asked if the Z.B.A. could vote to revisit a previous vote.

Attorney Davenport replied that the Zoning Ordinance does give that authority to the Z.B.A. based on the section read earlier.

Mr. Mahon suggested that the Z.B.A. think about the ramifications and discuss them at the next public hearing. He added that this would be the most prudent course of action.

Mr. Beckwith concurred and stated that an Executive Session with the County Attorney was necessary to discuss the ramifications.

Chairman Bartosh advised that the Z.B.A. would hold an Executive Session to discuss another matter and also the legal aspects of revisiting a previous vote. He asked if the Petitioner could withdraw the remaining variance requests.

Attorney Davenport replied that the Petitioner could request to withdraw since the remaining variance requests had not been voted on, however the height issue was moot but the parking issue was possible.

Mr. Kacena stated that he would like to proceed forward with the remaining variance requests.

Chairman Bartosh read the variance request for the reduction in the parking space size.

Bill Beckwith made a motion to approve the reduction of the parking space size. Ron Mabra seconded the motion.

Mr. Beckwith stated he had no comments.

Mr. Kacena pointed out that the proposed parking to the rear is 80 to 100 spaces which will connect to the end of the existing parking in the rear which is 9 foot by 18 foot parking spaces. He advised he could not make the vehicular circulation work with 9 foot by 18 foot parking spaces adjacent to 10 foot by 20 foot parking spaces. He reported that the spaces wrapping around the new structure will be 9 feet by 20 feet by design. He asked if additional spaces were needed or if the parking could be grassed.

Chairman Bartosh replied that pervious parking is preferred.

Mrs. Zeitler added that a church could have pervious parking such as gravel parking, per the specifications of the Engineering Department. She advised that grassed parking for strictly overflow parking must be approved by the Engineering Department but they are reluctant to approve grassed parking due to the grass being torn up and the area becoming muddy.

Mr. Mabra stated he had no problem with the variance for parking space size.

Mr. Blanks concurred.

Mr. Mahon asked the Petitioner why he could not comply with the 10 foot by 20 foot parking space size requirement for the new spaces.

Mr. Kacena replied he could comply on the new spaces.

Mr. Price stated that they would gladly do 10 foot by 20 foot parking spaces for the new spaces in front. He said that they really just needed a reduction in the size where they are matching up spaces in the rear.

Mr. Mahon stated it was not a hardship to comply with the ordinance. He said that they need to comply with the ordinance because matching the spaces is a convenience and not a hardship.

Chairman Bartosh advised that with some redesign, the parking could be modified and a variance not be required.

Mr. Mabra said that Mr. Mahon made a very good point.

Attorney Davenport stated that it seemed the variance request was now significantly smaller than first requested, and the Z.B.A. may want to set a specific number of spaces to be reduced in size.

Mr. Blanks remarked that the request was not a hardship but an aesthetic issue for uniformity and consistency.

Mr. Beckwith asked Mr. Kacena if he had a specific count of parking spaces to be reduced in size.

Mr. Kacena asked if the existing area could be re-striped to conform with the current requirements.

Chairman Bartosh stated that the re-striping would be preferential to the County. He added that there are other alternatives and not necessarily a hardship.

Bill Beckwith withdrew his motion. Ron Mabra withdrew his second.

Mr. Mahon pointed out that the whole concept of 10 foot by 20 foot spaces was due to the trend of larger vehicles such as SUV's, minivans, and pickup trucks.

Chris Kacena withdrew his variance request for the reduction in the parking space size. He asked if this was the time to propose an alternative.

Attorney Davenport advised that the Petitioner had a petition which could be voted on tonight but an alternative must be presented on a different application request. He added that if the Petitioner wanted to withdraw his request that a vote was not necessary.

Chairman Bartosh verified that the issue could be revisited by the Z.B.A. in 30 to 60 days.

Attorney Davenport replied that was correct.

Mr. Kacena asked if they would be held to the required 20 foot landscape area along the right-of-ways and the required landscape islands every 150 feet in the parking lot.

Chairman Bartosh stated that it would be in the best interest of the Petitioner to meet with Staff and find out what the alternatives are and then resubmit an application back to the Z.B.A. if needed.

Attorney Davenport advised that Chairman Bartosh was correct.

Chairman Bartosh asked Mr. Kacena if he wanted to pursue the building height variance.

Mr. Kacena replied yes.

Mr. Blanks asked if the building height was denied would that not prohibit the Z.B.A. from revisiting the enlargement of a nonconforming structure, and if passed it would have no validation.

Attorney Davenport replied that Mr. Blanks was correct. He added that if the Z.B.A. granted the height request that the building could not be constructed because the building cannot be enlarged.

Mr. Beckwith said that the building height request should be presented with the enlargement request.

Attorney Davenport reiterated that the building height request is a moot issue because legally the Z.B.A. cannot provide relief on this variance request based on the earlier vote of denial of the expansion.

Chairman Bartosh asked Mr. Kacena if he wanted to withdraw the building height request. He advised Mr. Kacena that the Z.B.A. takes variance requests very seriously in order to protect the citizens of the County. He said that he hoped Mr. Kacena would appreciate that the Z.B.A. is trying to give every effort of practical relief which they can, but it is probably in the church's best interest

to revisit the issue.

Mr. Kacena said he understood why the Z.B.A. did not want to vote on the building height request because it is linked with the enlargement request, however he was looking for some direction from the Board.

Chairman Bartosh replied that the Z.B.A. look at the structures placed about the County, what the intent of the ordinance is that has been presented, and what the intent of the B.O.C. was when they set the ordinance. He stated that it was not for the Z.B.A. to change the law but to grant relief in special circumstances. He said that relief for something which is doubling the building height might be more appropriately taken up with the B.O.C. to see if they want to amend the Zoning Ordinance to allow higher buildings.

Mr. Mahon added that the B.O.C. adopt the ordinances and the ordinances are specific and give clear direction. He remarked that the Staff Report states that this is the first time the Z.B.A. has heard a request to vary building height.

Mr. Kacena replied that he also knew that this was not the first building in the County which would exceed 35 feet.

Mr. Beckwith pointed out that the church was a nonconforming structure, but New Hope Baptist Church was a conforming structure in that it met setbacks.

Mr. Kacena requested to withdraw the request to vary the building height.

Attorney Davenport advised the Z.B.A. that they should discuss if they want to revisit this petition or not at their next meeting.

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Chairman Bartosh made a motion for the Z.B.A. to move into Executive Session to discuss two (2) items of legal. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

Chairman Bartosh advised the audience that the Executive Session had nothing to do with what was presented to them tonight. He added that it is for legal clarification.

Executive Session was attended by Attorney Davenport, Chairman Bartosh, Bill Beckwith, Ron Mabra, Tom Mahon, and Larry Blanks.

Attorney Davenport advised that the Z.B.A. discussed two (2) items of legal.

Executive Session was held from 8:10 P.M. until 8:40 P.M.

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Chairman Bartosh reconvened the Public Hearing at 8:40 P.M.

Chairman Bartosh asked if there was any further business.

Kathy Zeitler advised that one (1) application had been submitted for the June Public Hearing.

Chairman Bartosh asked if that was for discussion of reconsidering the church's request to expand.

Attorney Davenport replied that the Z.B.A. had announced that they would discuss revisiting the expansion request and that it would be added to next month's agenda.



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Mrs. Zeitler clarified that next month's agenda included the one (1) application submitted for the June public hearing, and as an addendum the Z.B.A. would discuss the possibility of reconsidering the church expansion requests by Harp's Crossing Baptist Church, but would not reconsider it or take a vote then, but just give the Petitioner some direction. She said that she had advised the Petitioners to try to minimize the number of variances requested.

There being no further business, Larry Blanks made the motion to adjourn the meeting. Bill Beckwith seconded the motion. The motion unanimously passed (5-0). The meeting adjourned at 8:45 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**