**THE FAYETTE COUNTY ZONING BOARD OF APPEALS** met on October 26, 2015, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

**MEMBERS PRESENT:** Bill Beckwith, Chairman
Larry Blanks, Vice-Chairman
Marsha A. Hopkins
Tom Mahon
Tom Waller

**STAFF PRESENT:** Pete Frisina, Community Services Division
Dennis Dutton, Zoning Administrator
Chanelle Blaine, Planning & Zoning Coordinator

**Welcome and Call to Order:**

1. **Consideration of the Minutes of the Meeting held on September 28, 2015.**

   Tom Mahon made a motion to approve the minutes. Tom Waller seconded the motion. The motion passed 4-0. Chairman Beckwith was late.

**PUBLC HEARING**

2. **Consideration of Petition No. A-627-15, Michael J. Cardone, Owner, request a Variance to Sec. 110-125. A-R, to reduce side yard setback from 50 feet to 35 feet to allow the construction of a proposed garage. The subject property is located in Land Lot (s) 67 and 94 of the 4th District and fronts on Duke's Court.**

   Michael Cardone stated that he is trying to build a detached two car garage at the end of his driveway with an attached breezeway to the house. He said his reason for wanting to build the garage near the side yard setback was due to the terrain of his lot. He added that the septic system was located in the front of his lot so the garage couldn't be placed there. He stated that there was a drainage easement to the left side of the house that he couldn't infringe upon. He added that on the left side of the house the terrain drops precipitously. He stated that to put the garage behind the house would create more of a hardship and problem because he would have to clear trees and level land. He said he understood that the board did not want to set a precedent. He added that he also understood the impact it would have on other properties. He stated that property adjacent to the right has a drive way near his, but the house is located in the very back of the property. He added that visually there shouldn't be any issues because the proposed garage would be behind the trees and below an existing berm. He stated that he believes the garage would enhance the value of his house and his neighbors.

   Chairman Beckwith asked if there was anyone who wanted to speak in favor of this petition. He then asked if there was anyone who wanted to speak in opposition of the petition.

Patricia Papandrea stated that she was the neighbor of Michael Cardone and that she was in opposition of the proposed garage. She said that her driveway is very close to Mr. Cardone's driveway and that the location of the proposed garage would be very visible. She added that the proposed garage could look as if it was a part of her property. She stated that the previous owner put up a tarp under an aluminum frame in the same spot Mr. Cardone is proposing, and everyone thought it was on her property. She said that the proposed garage would have an impact on her visibility because she would have to see it every day in passing. She stated that the community's lots are between five (5) and 12 acres and she didn't understand why her neighbor needed a variance if he has eight (8) acres. She said that the 50 foot setback is there for a reason and that the land is level with her driveway and she doesn't know of any berm. She stated that Mr. Cardone selected that location to build his detached garage out of convenience and that the proper place for the garage would be behind his house. She said if Mr. Cardone is able to get the variance it sets a precedent. She asked the board if they had any questions for her.

Chairman Beckwith stated that the board just wanted her comments. He then asked if anyone else was there to speak in opposition.

Joe Cramer stated that he was the neighbor of Michael Cardone and he was worried about him building within the 50 foot setback. He said that he thinks the garage would change how the lot looks. He added that the lots of the community are a good size and that was one of the reasons he moved there. He also stated that he and his neighbors moved to that community because it was clean and everyone stays in their own area. He said that he wanted everyone to be happy but that rules are there for a reason.

Chairman Beckwith asked if there was anyone else there to speak in opposition. He then told Mr. Cardone he could make some rebuttal comments.

Michael Cardone said he agreed with what the gentleman said completely, you don't want to set precedent that would be a problem. He stated that he did have an issue with Mrs. Papandrea's statement. He added that there is little doubt as to which property you're on when you're in his driveway. He said the one story garage would be half way below the berm that exists there. He stated that there were many scrub and hardwood trees on his property. He added that the garage would look just like the primary structure and would not make it an eye sore.

Larry Blanks asked if he was connecting the garage to a breezeway on his existing home.

Michael Cardone replied yes.

Pete Frisina stated that technically the garage would still be a detached structure because it is not connected by a heated corridor. He added the breezeway is not a true connection but a detached structure.

Larry Blanks stated that physically it would appear to be attached.

Pete Frisina replied that appearance possibly yes, but technically it is not.

Larry Blanks stated the drawings match what the house looks like. He added that he doesn't think that there would be any confusion on which neighbor it belongs to. He asked Mr. Cardone if he would have to widen his driveway.

Michael Cardone replied that there would be no change to the driveway. He added that the structure would be directly beyond the end of the driveway.

Larry Blanks asked if the driveway would extend out because of a storage area.

Michael Cardone stated that the storage area is at the back of the attached garage.

Larry Blanks replied that he saw it and that the proposed garage would be right at the edge of the present driveway.

Michael Cardone replied yes.

Larry Blanks asked Mr. Cardone if he was Lot number nine (9) according to the recorded plat of the Dukes Farm Subdivision.

Mr. Cardone replied yes.

Larry Blanks then stated that Patricia Papandrea's lot would be number 10 and Joe Crammer's lot would be number 11.

Tom Mahon asked Mr. Cardone if he already has a garage.

Michael Cardone replied yes. He stated that there is a two-car garage attached to the house.

Chairman Beckwith asked Marsha Hopkins or Tom Waller if they had a question.

Marsha Hopkins asked if this would be an addition to the garage he already has.

Michael Cardone replied yes.

Tom Waller asked how Mr. Cardone was accessing the back of his property. He asked if he was going around to the right, through the ditch on the left, or if he accesses it all.

Michael Cardone stated that he accesses the back of his property by going to the right.

Tom Waller stated that would push him beyond the 15 feet.

Michael Cardone stated that in terms of accessing the back of the property he would be going between the proposed garage and the house.

Tom Mahon asked Mr. Cardone if he was the second owner.

Michael Cardone replied yes.

Tom Mahon asked if he bought the house "as is".

Michael Cardone replied yes.

Chairman Beckwith asked if there was any other discussion.

**Tom Mahon made a motion to deny the variance. Tom Waller seconded the motion.**

Tom Mahon stated he is a strict interpreter of the ordinances and doesn't believe in granting a variance for the convenience of the petitioner. He added that the petitioner purchased the house "as is" with a garage and knew what he was getting. He also said by granting this variance that he would be setting a precedence. He stated that he only grants variances when a hardship has occurred that has not been brought on by the petitioner.

Chairman Beckwith asked if there was another place he could put the garage.

Michael Cardone replied that he could put the garage behind the house. He stated that it would require him to cut down more trees as opposed to the present location.

Chairman Beckwith stated that the board would rather him look at that option of placing the garage in the backyard. He added that the board doesn't look favorably on convenience for the petitioner if other options are available.

Larry Blanks asked Michael Cardone the location of his septic lines.

Michael Cardone replied that the lines are in the front yard.

Larry Blanks stated that he doesn't look at the County Zoning Ordinance as rigid but more as a guideline. He added that he tries to help the homeowner as best he can. He said that he was leaning of voting in favor of the petitioner until he heard the protest from his neighbors. He added that he wants to keep neighbors happy. He stated that he would have to go with the motion on the floor.

Chairman Beckwith asked if there were any other comments.

Marsha Hopkins added that she too was leaning toward the petitioner, but the comments from the neighbors and the option to put the garage in the backyard has made her support the motion on the floor.

**Chairman Beckwith called the question. The motion was denied 5-0.**

3. **Consideration of Petition No. A-628-15, Doyle C. Lindsey, Owner, request a Variance to Sec. 110-133. R-70 to reduce rear yard setback from 50 to 36 feet to allow an existing accessory structure to remain and Variance to Sec. 110-79. Accessory structures and uses., to not require 50 percent of the accessory structure to be fully enclosed. The subject property is located in Land Lot 227 of the 4th District and fronts on New Hope Road and Kenwood Road.**

Randy Boyd representing Mr. Doyle Lindsey stated that Mr. Lindsey bought 50 acres in 1963 which included his property and the property across the road. He said that Mr. Lindsey had the lot split to give to his two (2) sons. He added that when the survey was completed it revealed that the pole barn was too close to the rear yard setback. He stated that Mr. Lindsay built the pole barn between 1968 and the early 70's. He added that he did some research with the help of Pete Frisina and found that the oldest zoning ordinance did not come into effect until October 1971. He said that Mr. Lindsey had built the pole barn prior to there being any setback lines. He added that by subdividing the property into two (2) R-70 lots with a 50 foot rear yard setback instead of A-R lots with a 75 foot rear yard setback he has decreased the rear setback. He also requested a variance to leave the pole barn the way it is. He stated that he had pictures of the pole barn and showed them to the board. He said that Mr. Lindsey had acreage across the street that he had to take care of and built the pole barn to house his tractor. He added that the pole barn is not visible from the road. He stated that when Mr. Lindsey constructed the pole barn, no permits were needed nor were there any building lines to stay clear of. He added that Mr. Lindsey's neighbor to the northeast was not in opposition of the pole barn. He mentioned another neighbor north of Mr. Lindsey that was not in opposition of the pole barn. He asked the board to look favorably on his request.

Chairman Beckwith asked if there were any discussion. He then asked would someone like to make a motion.

Larry Blanks stated he had some additional pictures.

Tom Mahon asked staff why the Board of Commissioners was requesting that 50 percent of the accessory structure be enclosed.

Pete Frisina replied that the ordinance requires that 50 percent of it be enclosed.

Tom Mahon asked how the ordinance handles existing accessory structures that are presently open to being 50 percent enclosed.

Pete Frisina replied that when you rezone property from A-R to R-70 to subdivide you must bring everything into compliance. He stated that this pole barn is not in compliance with the R-70 because it doesn't meet the rear setback. He added that it's not in compliance with the accessory structure requirements for residential zoning that requires 50 percent of it be enclosed. He stated that usually the board will set six (6) month deadlines after a rezoning for the petitioner to come in and get a variance or bring the structure into compliance.

Tom Mahon asked the petitioner why he is opposed to coming into compliance under the R-70 since he did elect to sell the property or have it rezone for financial gain and why there is a resistance to put sides on 50 percent of the structure.

Randy Boyd replied that there is no resistance to that. He stated that they're here tonight to request a variance for the distance encroaching on the rear building line. He added that Mr. Lindsey would be happy to enclose that if you so choose. He said that Mr. Lindsay is not seeking financial gain from the rezoning and subdividing of his property. He added that Mr. Lindsay is given the property to his two (2) sons.

Tom Mahon asked the petitioner if he was not opposed to enclosing the sides of the structure to meet the existing ordinance.

Randy Boyd replied that we're not opposed.

Larry Blanks told the board that he visited the property and talked to Mr. Lindsey's son. He stated that Mr. Lindsey's son said the property was six (6) acres.

Randy Boyd replied that on the original site plan the parcel was six (6) acres. He stated that Mr. Lindsey had to give additional right-of-way of 50 feet to New Hope Road, but the acreage for the original lot was 6.205 and was then split into two (2) lots one (1) 3.88 acre lot and 2.322 acre lot.

Larry Blanks asked if you can still have A-R zoning on a six (6) acre lot.

Pete Frisina replied that they rezoned it from A-R to R-70.

Larry Blanks asked if they can go back to A-R.

Pete Frisina replied if he wants to go through the process again, but I don't thinks that's what they're trying to do.

Larry Blanks said he was just looking for an alternative. He added that it could stay the way it is if they rezoned the property back.

Pete Frisina replied that the property is not grandfathered now because we have a nonconforming structure and the property has been rezoned two (2) times.

Randy Boyd said that the purpose of splitting it up was because there are two (2) houses sitting on it. He reiterated that this took place before the zoning ordinance came into being and that the subdividing and rezoning of this property was not for financial gain but was a gift his to his two (2) sons.

Chairman Beckwith asked if there were any other comments.

Larry Blanks stated that the accessory structure cannot be seen from the road and neither of the neighbors can see it from their proprieties. He added that the lay of land is pretty thick and that there were gullies and a stream back there. He said it looks rural.

Ryan Boyd said that there is no opposition from the neighbors. He requested that the board approve it.

Chairman Beckwith asked for a motion.

Tom Mahon made a motion to deny. Marsha Hopkins seconded the motion.

Tom Mahon stated his reason for denying the variance was because the petitioner was requesting out of convenience. He said that the petitioner did not have any opposition to bring the accessory structure into compliance with the R-70 zoning. He added that the fact that the structure is in the back had no relevance nor does he see a hardship.

Larry Blanks said that the petitioner is requesting a variance of 14 feet to the rear setback and not to bring it in compliance with the siding.

Dennis Dutton stated that there were two (2) items being requested and that they can be voted on separately.

Tom Mahon withdrew his motion to deny.

Marsha Hopkins agreed that she would like to withdraw her second.

Pete Frisina stated that there are two (2) sections listed. He said the first section listed is Section 110-133. R-70 that's asking for a variance to reduce the rear yard setback, and Section 110-79 Accessory structures and uses., asking for a variance from the requirement to enclose 50 percent of the building. He reiterated that it was two (2) variances and one (1) petition.

Tom Mahon asked if we can have two (2) motions.

Pete Frisina replied yes.

**Tom Mahon made a motion to approve the setback variance. Larry Blanks seconded the motion. The motion passed 5-0.**

**Tom Mahon made a motion to deny the variance to not require that 50 percent of accessory structure be fully enclosed.**

Chairman Beckwith asked for his reasoning behind the motion.

Tom Mahon said that his reason for his motion was because the ordinance states that R-70 requires 50 percent of a structure to be enclosed.

Pete Frisina replied that it's not specifically the zoning district but an accessory structure in any residential zoning must be 50 percent enclosed. He added that the only place you can have a true pole barn is in A-R.

Tom Mahon said that the only way for the petitioner to be in compliance with the R-70 requirements of an accessory structure is for him to comply. He added that the petitioner requested to be R-70 and has no reluctance to comply. He said that the denial vote was the right thing because it helps them with future precedence.

Chairman Beckwith asked if there was a second.

**The motion died for a lack of a second.**

Chairman Beckwith asked Pete Frisina if they could add a condition since the petitioner agreed to enclose the structure by 50 percent.

Pete Frisina replied that you had a motion to deny that second variance, and it died for a lack of a second. He said that a decision needs to made, for the second portion of the variance and that could be approval, denial, or table.

Chairman Beckwith then asked what if they approve it.

Pete Frisina replied that by voting to approve the petitioner would leave the accessory structure "as is".

**Tom Waller made a motion to approve the variance to not require that 50 percent of accessory structure be fully enclosed. Larry Blanks seconded the motion.**

Tom Mahon stated that we are setting a precedent for others that come in to an R-70 district without meeting the zoning requirements.

Larry Blanks said it is not a precedent due to the age of the pole barn and the fact that it is not a new structure being built.

Chairman Beckwith agreed with Larry Blanks stating that the property is old, and that the barn was constructed for a particular purpose. He stated that he thinks it was something that the board should approve because of the uniqueness of the situation.

**Chairman Beckwith called the question. The motion passed 3-2. Marsha Hopkins and Tom Mahon voted against the motion.**

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There being no further business, Larry Blanks made the motion to adjourn the meeting and the meeting adjourned at 7:30 pm.

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

**BILL BECKWITH, CHAIRMAN**

**ATTEST**