

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on March 25, 2019, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Marsha Hopkins, Chairman
Tom Waller, Vice-Chairman
Bill Beckwith
John Tate
Therol Brown

STAFF PRESENT: Chanelle Blaine, Zoning Administrator
Howard Johnson, Planning & Zoning Coordinator

Welcome and Call to Order:

Marsha Hopkins welcomed everyone to the meeting and introduced each member of the Zoning Board of Appeals. She also introduced the two staff members, Howard Johnson and Chanelle Blaine.

1. Consideration of the Minutes of the Meeting held on December 17, 2018.

Therol Brown made a motion to approve the minutes of the meeting held on December 17, 2018. John Tate seconded the motion. The motion passed 5-0.

2. Consideration of the Minutes of the Meeting held on February 25, 2019.

Bill Beckwith made a motion to approve the minutes of the meeting held on February 25, 2019. Therol Brown seconded the motion. The motion passed 5-0.

PUBLIC HEARING

3. Petition No. A-694-19, Ellarie Noel, Owner, and J&M Pools Services, Agent request the following: Variance to Section 110-126. C-S. (f) (5) to reduce side yard setback from 30 feet to 18 feet to allow for the construction of swimming pool with a surrounding deck. The subject property is located in Land Lot 49 of the 7th District and fronts on Elysian Drive.

Chairwoman Hopkins stated that our first petition is one (1) that we carried over from last month. She said Chanelle you will have to guide me on the protocol for withdrawal of the petition.

Chanelle Blaine stated we just need to make a motion on accepting their withdrawal and once we do that we can go on to the next petition.

Tom Waller made a motion to accept the request to withdraw Petition A-694-19 from

consideration. Therol Brown seconded the motion. The motion passed 5-0.

4. **Petition No. A-695-19, D. Brent Scarbrough, Owner, and Daniel Fields and Richard Ferry, Agent request the following: (1) Variance to Sec. 110-125 A-R (d)(4)(a)(2) to reduce the front yard setback along Grant Road from 100 feet to 50 feet; and (2) Variance to Sec. 110-125 A-R (d)(4)(b) to reduce the front yard setback along Rowland Road from 75 feet to 50 feet. The subject property is located in Land Lot 88 of the 4th District and front(s) on Grant Road and Rowland Road.**

Daniel Fields thanked the Zoning Board for being there. He stated that he had a handout and asked Chanelle Blaine to hand it to the Zoning Board. He said in 2017 we purchased this property about 97 acres and with this property we acquire a 1.16 acre piece of property on the corner of Grant and Rowland Road. He added that it is in a triangular shape and if you look on page three (3) you can actually see it on a survey that was done a good while ago before this property was actually split up into different pieces. He stated that it was actually 1.171 acres instead of 1.16 acres. He said we realize that when the original Lowery Road which is now Grant Road was put in Fayette County came in and made that 1.17 acre lot. He said being here today we were hoping to get the setbacks moved a little bit back so we can put a house there, because as it stands now when we apply the setbacks it creates about a 680 square foot east of a triangle that we would be able to put a house on. He added this would be unrealistic; believe it or not our bookkeeper recently retire and moved to Brooks and we were hoping to put the house there. He stated I included a copy of the house plan that we would want to put on this piece of property. He said when we apply the setbacks as they are it creates an unusable use for the property. He added being here today I am here to request that we reduce the 100' front yard setback to 50' on Grant Road and then reduce the Rowland Road setback from 75' to 50'. He stated our reason why is because we would like to put a house there for our bookkeeper who would like to move to Brooks. He said you can see the survey that I included on page three (3) that is the original and we took the correct one (1) before we purchased the property and then split that up, and then you see the survey that we had done on page (4) that shows tract one (1) now being subdivided with the triangular lot still existing. He added we then come to page five (5) that shows the buildable lot area that is a result of current setbacks being applied. He stated finally on page six (6) we can see what our request is, and it is a building footprint that is 69 feet wide 63 feet deep and it results in a 50 foot setback from Grand Road and a 50 foot setback from Rowland Road and we are not requesting any setback changes on the property line adjacent to the neighbors. He said this is a non-conforming lot and we confirmed that with Chanelle and Pete.

Chairwoman Hopkins asked if anyone else would like to speak on behalf of this. Hearing none, she asked if anyone in opposition would like to speak.

Helen Naler stated that she lived in Brooks and had not planned on speaking this evening but the person that would have been there was called out of town. She said she spoke with Mr. Johnson today and the fact that the agenda for this meeting was never posted I have a problem with that because I think we need a little more preparation to talk with the Board

here about these zoning hearings, but if we don't even know what they will be discussing it's going to be pretty hard to do. She said thanks to Mr. Johnson he did email me the agenda and all the paperwork. She added that one (1) thing he said to me, and why the people here from Brooks are probably opposed to it, is of course the size of the lot, where it is on Grant Road on that curve; the fact that if you set the variance closer to the road it does give you more room to build, but right now you only have enough room to build a 680 square foot living space. She stated that the property does not have any water or sewage, and would require a septic tank with laterals and a well; those things have to be separated far enough apart and there wouldn't be enough room for that at all. She mentioned that Mr. Johnson said that there is a minimum building size of 1200 square feet there, and 680 feet is not going to get it. She added that if you built it closer to the road I still don't think that would still be enough room to build a house. She said the opposition to this is wide and those things that I had mentioned are not a good thing to have there. She stated that the septic tank will probably be right on the road or close to either roads or the fact that a well needs to be built.

Gary Outz stated that he lives at 122 Rolling Road, which is the property directly behind the property, which the presenter stated that would not be effected. He stated I do not understand the compliance piece of it.

Chanelle Blaine interjected saying it is a legal non-conforming lot of record which means that the lot was created before November 13, 1980 (zoning ordinance was created). She said the lot was created back in 1968.

Gary Outz stated the road was put there and sliced off that property.

Chanelle Blaine said yes, that is how the lot was created. She added we can't make that lot have five (5) acres, because it was created before the zoning ordinance. She stated it is legal in the since that it was created before the zoning ordinance but non-conforming because it doesn't meet our five (5) acre minimum for A-R.

Gary Outz replied thank you, I did not understand that compliance piece. He stated with that being said all of our neighbors are under the same understanding. He said that he came from a subdivision with one (1) acre lots for 28 years. He added that they rented a barn and pasture for 17 of those years while they looked for a place to settle. He stated we were blessed with the property in Brooks and we enjoy being there and we fill like it would deflate our property values. He said for one (1) thing to have that small of a house on that small of a property that when we came to this area, the curb on the road, and it's an unwelcome proposal in our community.

Chairwoman Hopkins asked if anyone else would like to speak in opposition.

Kathy Peterson stated I live right off of Grant Road for 22 years. She said we have put quite an investment inside our home and property. She added we have raised our children there and now I'm enjoying my grandchildren. She stated I have recently retired from the

Coca-Cola Company and my husband was Delta employee. She said we take great pride and have put forth great effort and sacrifice to build our home. She added I drove from Brooks every day to downtown Atlanta, because Brooks is where I want to live. She stated the sacrifice we have made to live in a community that has spacious homesteads, wildlife, and peace of mind. She said it's a charm that is surrounded by Brooks and what we give up for that is amenities; we have no fire-hydrants, we don't have the best internet, we have no amenities what so ever, we can't get pizza delivered to Brooks. She added we are willing to accept that for the quality of life it's a trade-off. She stated this will comprise that and we have worked very hard and put forth everything we owned to make this our homestead. She said I strongly oppose; you knew it was an unbuildable piece of property, so just leave it natural. She added that's great and beautiful and adds to the community it does not take away.

Chairwoman Hopkins asked if anyone else would like to speak in opposition.

Joan Coleman stated I live right across the road from where this is happening and it just doesn't look like a heck of a lot to build a house on. She said I personally know Brent he is a friend of ours and I don't know why he would build there. She agreed with her neighbor that it may affect their property too. She added that are going to have a hard time getting a house in there and there has got to be another small lot some place in the Brooks area. She stated I really hate to go against Brent Scarborough but this how I feel, and I hope it doesn't go through.

Chairwoman Hopkins asked if anyone else would like to speak in opposition. She stated that Mr. Scarborough gets a chance to rebut.

Daniel Fields stated thank yall and I really respect your opinion. He said the one (1) point about the sceptic and the well study we did that, and the house that's on there is a pretty nice house. He added if the site distance is an issue we will take care of it.

Bill Beckwith asked what size this house will be.

Daniel Fields replied this is not an exact house plan, but it will be built by this builder in a way that will fit on the lot, in the way we have presented it to you. He added it will fit as we planned it out.

Bill Beckwith stated just to bring up a point in agricultural residential (A-R) zoning a 1200 square foot house is approved. He said someone with 25 acres of land can build a 1200 square foot home. He asked about what size you think this home would be. He asked do you think it would be more than 1200.

Daniel Fields replied probably. He added I would venture to guess more than 2000 square feet or larger.

Bill Beckwith asked it wouldn't be the minimum that's allowed.

Daniel Fields replied no.

Bill Beckwith stated which is a concern of many folks. He stated someone could build a home next to anyone on a lot and build it to 1200 square feet. He added that is what the zoning regulations say and I just want to bring up that point to everybody.

Tom Waller stated with the setback adjustments you are requesting, and these are not shading off setbacks; one is a 50 foot reduction and the other is about 33 percent reduction. He asked how many square feet would that provide you to build the house.

Daniel Fields replied we asked for more than what we will need.

Tom Waller interjected I hear that but I would like to hear a number.

Daniel Fields replied the plan that we have showing here at the footprint is we wanted to make the variance appropriate to get what we see fitting in there, and not have to come back and request another variance. He said right now that's 4000 square feet.

Tom Waller asked which road the drive will come in.

Daniel Fields replied we think the house will front to Grant Road, so the driveway will be on Grant.

Tom Waller stated Grant Road is the secondary the lesser traveled road than Rowland. He said no Rowland is the secondary.

Daniel Fields replied right.

Tom Waller asked and you're not coming in from Rowland.

Daniel Fields replied we could come in from Rowland, but all I know is the house will front on Grant.

Chanelle Blaine interjected saying we received a letter from the Engineering Department. She said it came a little late and I'm sorry it wasn't on the report, but they asked that the access from the home be off of Rowland Road.

Tom Waller stated so you have 4000 square foot of buildable area and a 2000 square foot house, which would leave you 2000 square feet for the septic fields and driveway accessing the house; is that correct.

Daniel Fields replied the driveway is not included in that calculation, but we just left ourselves enough space so we could twist the house as needed.

Bill Beckwith stated that I think the well and the septic tank can be in the setback.

Chanelle Blaine agreed saying it can.

Bill Beckwith stated the lot has 1.68 acres available.

Chanelle Blaine stated that there was no comment from the Environmental Health department; they're the ones that oversee septic and wells on lots and they had no comment with the variance.

Bill Beckwith stated we ran into this situation where the County has gone out and put roads in, and in this particular case this was well before any zoning was established as Chanelle said. He said we have also had cases where the roadway was built and has taken slices off of someone's property. He added we made arrangements for that because it was the County that did it, and it may have been and often was before zoning took place. He stated we see property like this not saying often, but we've seen a few of them in the last year that is legal non-conforming lots. He said non-conforming being they don't meet the size of the zoning category (A-R five (5) acres), that is usually the case that we see. He added that I think we need to take that into consideration. He stated the County did something and it did something to some property; and overriding consideration is that people who own property have the right to develop property if it is developable and can get it approved for something like this. He said in the past we have done that. He added that you have to balance the property owner's rights with the neighborhood who may have something against it. He stated it's not pleasant to say but the point being is the County did this in the past, the County chopped up some land and what's left over is someone's property and we need to look at that too.

Chairwoman Hopkins asked Chanelle Blaine, this piece of property for all these years there has been nothing on it it's just been this triangle piece of property.

Chanelle Blaine replied yes, it's been undeveloped.

Chairwoman Hopkins asked Daniel Fields, when you bought this.

Daniel Fields replied I work for Mr. Scarborough and we bought this in 2017. He said we bought 91 acres and this came with it. He added this is a result of right-of-way being taken.

Chairwoman Hopkins stated so you were aware that it was an oddly shaped lot.

Daniel Fields replied right, we were under the impression with the right variances that we would be able to develop the lot.

Therol Brown stated that this board does not approve the size of a house on any lot that is under zoning. He said the legal non-conforming is because the County acquired the right-of-way and made it a remnant lot. He agreed with Mr. Beckwith stating that every land

owner has the right as long as the housing standards are complied with. He added that it is not up to us to say what size house should be built, and where the driveway should go. He stated we are here to address the request for the setbacks. He said I am sure you already know that but I just wanted to point that out.

Bill Beckwith stated Therol the reason I brought up the size of the house is because it may put to rest some of the concerns of the folks who are oppose to this that it won't be that small. He said 1200 square feet is small house but it's legal and can be done. He added that Mr. Fields and his folks are probably going to build a larger house and he can't be made to say what size. He stated he did say it was going to be greater than 1200 square feet. He said what I saw on the drawing that style of house is very attractive. He added that was the point I wanted to make on the house size is that it could be smaller, but they're going to build one (1) that is larger.

Tom Waller asked has any attempt been made to gain additional property from the adjacent land owner.

Daniel Fields replied no.

Chairwoman Hopkins stated I have a couple of comments and I find this one (1) to be difficult for a number of reason. She said it's not that we had a similar type of request but this is an oddly shaped piece of property on the end. She added partly one (1) of the reasons setbacks are a part of zoning is public safety; and given the proximity of this and the amount of setback you're wanting, I think someone said is a car going to end up in my house, no, but it looks that close. She stated the other thing that gives me pause is the property stayed undeveloped for all these years so, buying this property sort of puts you on notice you're getting a piece of property that you may have questions about what you may be able to do with it but you bought it anyway. She said we are under the impression that you could request a variance and it would at least be considered. She added I am on the fence because I think that the reason why we have variance request for setbacks is so you can build on a piece of property that is maybe non-conforming, but in this case where it is situated it seems to just be out there. She stated that my concern is mainly for public safety because of where it's situated.

Bill Beckwith asked Mr. Fields, did you buy this piece of property as a single piece or as a larger lot.

Daniel Fields replied that it was a part of the 97 acres we bought. He said we didn't buy this.

Bill Beckwith interjected it came with the package.

Daniel Fields replied yes sir.

Bill Beckwith stated you would obviously like to do something with it, if you can?

Daniel Fields replied right.

John Tate stated in looking at the items that make up the request and in few of some of the things that have already been seen here I also have difficulty with it, because the property seems to be already known prior to the time of the purchase. He said it is not as though this changed after the purchase, and I cannot see where there is going to be any hardship imposed by not allowing this variance. He added with the amount of variance that has been requested, is not asking can we go from 100 feet to 80 feet and based upon those circumstances I am on the fence.

Chanelle Blaine stated I know people have concerns about public safety but the engineering from the Public Works department had no comments for these two (2) variances. She said I just wanted to make sure that you all know that. She added the Engineering Department only asked that the access come off of Rowland Road and not off of Grant.

Bill Beckwith made a motion to approve a variance to Sec. 110-125 A-R (d)(4)(a)(2) to reduce the front yard setback along Grant Road from 100 feet to 50 feet.

Therol Brown seconded the motion. He stated I agree with everything that has been said, but regardless to who owns this land I have a philosophical issue with the County coming taking someone's property and leaving a remnant and then denying that landowner the right to build. He said I don't think that is fair to the landowner and I think it's unfortunate: I know you have to have the roads and parks and things but to leave it unusable with no fault of the owner regardless of who that owner is I just have problem with it. He added so I second.

Tom Waller stated may I make a comment on your comment the County may have gotten the right-of-way free from the property owner and did not have to go through condemnation. He said in our County history that is the way right-of-ways were gained. He noted they offered the landowner the opportunity to donate; so he would have a better road to take crops and not necessarily did they have to go through a condemnation protocol to secure right-of-way.

Therol Brown stated I didn't say it was through condemnation but through eminent domain for the purpose of building a public road. He said I would bet you any amount of money that I have, which is zero, that the land owner did grant the right-of-way to the County. He added that Fayette County rarely purchases right-of-way particularly 20 or 30 years ago.

Chanelle Blaine stated I can't answer that you would need to talk to someone in the Engineering Department.

Therol Brown stated be that as it may it was still acquired by the County and is responsible for making it legally non-conforming.

Chanelle Blaine agreed yes sir.

Chairwoman Hopkins stated that it is difficult and is one (1) that I share a lot of concerns with myself. She said my concerns are with the public safety and the engineers have signed off on that. She added that is something we look at and I can't dispute that. She noted that is fundamental to my thinking here and with that I will support my other two (2) board members.

Bill Beckwith stated that my first motion was a reduction from 100 feet to 50 feet along Grant Road and we have a second variance also.

The motion passed 3-2. John Tate and Tom Waller denied the motion.

Bill Beckwith made a motion to approve a variance to Sec. 110-125 A-R (d)(4)(b) to reduce the front yard setback along Rowland Road from 75 feet to 50 feet. Therol Brown seconded the motion. The motion passed 3-2. John Tate and Tom Waller denied the motion.

There being no further business, Chairwoman Hopkins made the motion to adjourn the meeting and the meeting adjourned at 7:49 pm.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Marsha Hopkins

MARSHA HOPKINS, CHAIRWOMAN

Howard L. Johnson
HOWARD L. JOHNSON, ZBA SECRETARY