

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on July 22, 2019, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

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

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

STAFF ABSENT: Pete Frisina, Director of Community Services

Welcome and Call to Order:

1. Consideration of the Minutes of the Meeting held on June 24, 2019.

Bill Beckwith made a motion to table the minutes until the next meeting on August 26th, 2019. John Tate seconded the motion. The motion passed 5-0.

PUBLIC HEARING

1. Petition No. A-703-19, Lenora and Isaiah Mitchell, request the following: Variance to Sec. 110-137.(d)(4)(b) to reduce the front yard from 40 feet to 32 feet to allow for the construction of a single-family residence. The subject property is located in Land Lot 253 of the 5th District and fronts on Benjamin Circle.

Mrs. Lenora Mitchell (125 Wesley Forest Drive, Fayetteville) began by stating that I am here today to ask the Zoning Board of Appeals to grant permission for me to move my setback line closer to the street. She said, I am in a precarious situation where there is swamp land behind me. She explained, we knew going in that it was going to be very tight and we tried very closely to work within the boundary that we had, but when we bought the land, we designed a spot that we thought would work to put the house. She noted, that the Environmental Health Department required that the very best soil should be reserved for the septic system, so consequently we had to move the house back and over into the marsh. She said, somehow when they dug the footing for the foundation they came off the tight line and that caused us to be noncompliant. She explained, that at this time there's nothing that we will do to that will cause any problems to the neighborhood. She added, the house is in compliance with the other houses in the neighborhood, the structure is about the same size, and the materials will be compliant with the neighborhood. She concluded, at this time, I would ask that we be granted permission to use our foundation since we have it up and not have to take it all down and move it further to the right to try to find some land.

Chairperson Hopkins asked if there was anyone to speak in favor of the petitioner's case. Hearing none she then asked if there was anyone to speak in opposition of the petition.

Phil Roberts began by saying hello, I want to thank you all for this hearing and for allowing us a voice to speak out on what is going on in our neighborhood. He said, I live at 160 Benjamin Circle, and I have lived in this neighborhood about 10 or 11 years now. He began, by saying that that Mrs.

Mitchell purchased, knocked down and cleared the trees for two (2) properties, about 200 yards apart from each other. He explained, that that on one (1) end, across the street from me at 160 Benjamin Circle, there is my neighbor, Mike, who lives on that corner and there is a wooded area with a swamp and petroleum pipeline behind him and just the worst place to build a house. He said, that she cleared the lot across the street from me, it revealed a swamp and now she's doing the same thing next door to my neighbor Mike, and it's atrocious. He stated, equipment was left there, it's not a very professional thing, it's like she is trying to find a place to put the house now, this was not thought out. He expressed, so I don't have any faith that Mrs. Mitchell will build a comparable house to what is in the neighborhood, even with all the houses being 30 years old. He added, that because the foundation that she started building next to Mike's house, when Mike leaves his front door, he can look into the back door of the current property. He explained, I think that two (2) parties are at fault here, Mrs. Mitchell clearly thought that she could build a nice house here, I can see that, but whoever gave her the permission to build a house there really hasn't looked at that neighborhood either, because there is a swamp and she is saying that she is having problems because of the swamp. He noted, that for 30 years no one (1) has developed any of this this land, it's just not really a good place to put a house and so she's knocked down trees for two (2) lots and now she is out of compliance with the house, looking for another way to get this house built, but it's not going to be in accordance with the neighborhood. He concluded, I am in staunch opposition to what she is doing and I can't replace those trees, she has already knocked down the lots but somebody really should really do something, it was a nice neighborhood, she's tearing it up.

Chairperson Hopkins asked if there was anything else he wanted to add.

Phil Roberts replied that he was also written his County Commissioner, Charles Rousseau. He said, that due to a cold and my work schedule, I wasn't able to really reach out to a lot of my neighbors to make my case with my neighbors, and I really wanted to get more people to come out. He explained, that it clearly doesn't seem to be a hazard but it's an ugly site now, based on what was there, the growth is coming up through the ground and there was heavy equipment of the side of road for months. He also noted, that we are coming up on a year since Mrs. Mitchell used to come out in front of my house and peer into these woods like there could be something there but anybody could have told her that it was a horrible place to build a house. He explained, we are coming up on a year but now we have two (2) vacant lots and no one (1) knows what's going to happen, we are all here because we have no idea what's going to happen. He said, it just really seems like there has not been any thought by the people who approved this thing or the person who is doing it. He complained, that this is some kind of experimentation in my neighborhood and it is just a blight on the neighborhood, overall. He said, I can only just voice my opposition to allowing this by a person who hasn't thought about this to this point, I don't see how they can have a beautiful house. He stated, I don't know who's going to live there, it just doesn't seem like it's going to do the neighborhood any good at all. He concluded, I oppose, if she was building something that looked nice, okay cool, its America right, great, wonderful but, she is taking away from the neighborhood. Thank you.

Chairperson Hopkins asked if there was anyone to speak in opposition.

Michael Dious (245 Benjamin Circle) stated that I live directly next door to the property that is being constructed now and there has not been any investments there since 1985. He said, currently there is a foundation up and I totally agree with my neighbor, but I have some questions and concerns pertaining to a contractor that has invested time and money to put a foundation up, knowing that she is not in compliance, and now they have asked to come to the Zoning Board of

Appeals to ask to have the property rezoned. He explained, my understanding, I think I am correct, Fayette County has changed the zoning last year and now we have a builder requesting to have it zoned again for their purpose and I guess miscalculations in building this property. He added, as my neighbor stated it is not properly or professionally done, there is a pile of earth and tree stumps that was left there, it is just horrible, it's not a site where you enjoy bringing family members and friends to your home, because they will have to pass and see that site. He concluded, I am totally against changing the zoning to meet the builder's need. Thank you

Chairperson Hopkins asked if there was anyone to speak in opposition.

Billy Gunning stated that he lives at 115 Benjamin Court and he just wanted to agree with his fellow neighbors. He said that when the very first lot was cleared, I was really surprised to see that they were knocking down the trees. He also said, he just happened to notice that they cleared everything and there was not a silt fence out there and a day or two (2) later, a Stop Work Order up, but yet everything has been cleared. He noted, that we have wetlands, which the Army Corps of Engineers oversees and we let just someone go in and clear it. He stated that she has started another lot and we are going through the same process again and cleared it. He said it seems to me they haven't had much guidance or no real plans on how they are going to build this house. He said, it definitely has not done anything to help our neighborhood, I have been there since 1985, if this property is good enough to develop, I would have seen it back in 1985.

Chairperson Hopkins asked if there was anyone else to speak in opposition.

Janet Warren (125 Catherine Lane) stated that she lives in the Franklin Farms Subdivision and she has been there since 1981 and of course at one (1) time it was a very nice neighborhood and we noticed the those lots years ago since they were never developed, but the reason why was because it was not developable there wasn't enough land there with the setbacks and the swamp in the back or the water area and now we have two (2) beginnings of construction, that as he said, has not helped the neighborhood, we thought it was going to be revised a little bit in coming up, but now it is just making it worse. She said, I can't understand how anyone would begin starting construction and not know what they know now. She added, I mean how did that ever happened, it's a dilemma now, because now you have something of a foundation in a cliff and a ditch and the other areas just emptied out of the woodlands, where the deer use to run. She concluded, I don't have the solution, but I don't really like the idea of anything being changed in the neighborhood and it's not going to benefit the neighborhood. Thank you.

Chairperson Hopkins asked if there was anyone else to speak in opposition.

Chairperson Hopkins informed Mrs. Mitchell that she is welcome to come forward and rebut the statements.

Mrs. Mitchell replied that I hired a reputable engineer, I hired all the companies that were involved, the Corps of Engineers, everyone that had anything to do with that property, because I understood that it laid vacant all of those years, and it had to be a problem. She stated, that I went to the Environmental Health Department, I went to everybody that was concerned. She said, in doing all my homework, we found out that there was enough land to put a house. She added, the only issue that arose was the space for the septic tank and I was told by the Health Department that I had a very narrow margin, and to be very, very careful. She stated, at this time I take full responsibility for the company that went over the line and they only went over the line just a little bit and that is

why I am asking for the variance. She said, I understand because in my neighborhood, if somebody came in and was doing something to my neighborhood that I had lived there 20 to 30 years and I loved and enjoyed, I would have an opposition to that fact too. She added, we haven't done anything to that neighborhood to bring it down, there are houses there, that have trash and old appliances on the porch and construction materials and I have been in and out of that neighborhood for the last three (3) years and when we finish our house, the house will be for my daughter, it not be for sale, it will be one of the nicest houses in the neighborhood, the deer still roam, the raccoons still come out, all of the wildlife. She said, we haven't done anything, we had to take down trees, and we had to take down overgrowth in order to be able to site the house. She added, but if you go out and you take a look, you will be able to see where we did clear just that area for that house, because we could not go back any further because of the wetlands. She added, at this time, I would say that if I have to take down the foundation and move it back a couple of feet, I would lose a lot of money. She explained, we have invested a lot of money in this project and we will have to go through with building the house, there is no room to stop and leave everything and go backward, I got to go forward because they are saying the construction looks ugly, it's going to look even uglier if I have to just leave everything and leave the site. She explained, I can't plant the trees back, but like I said earlier, I only took down the trees that were necessary to put down the foundation in. She said and when we get finished, like on all construction sites its ugly at first. She added, I do have a silt fence, and I did all of the requirements to get the building permit, and I followed every letter of the law. She concluded, if the people who dug the foundation had not gone outside the line on the foundation, I would not be here today, but they did and we have to remedy the situation.

Chairperson Hopkins stated that if there are not any other comments. Being none, she moved the item to the Zoning Board of Appeals for discussion and questions.

Bill Beckwith stated that he doesn't know how many other lots there are, but we are concerned with one (1) lot only and this is the lot that Mrs. Mitchell is talking about. He stated that I don't know anything about any other change to zoning ordinances or anything like that, that doesn't concern us today. He said, what concerns us is will a house be built the way it sits or will the foundation have to be changed. He added, it kind of looks to me that Mrs. Mitchell says she is going to build a house there no matter what. He stated, if that mistake had not been made, the house would already be under construction, so we got a design of the house, I think that the way the situation is, it's not the best lot I ever seen but apparently is buildable, so I think that Mrs. Mitchell has a situation we have to deal with should we allow the variance or not on that lot.

Chairperson Hopkins said that her comment, for discussion, to Mrs. Mitchell's point, and it does come up frequently with other petitioners before us, is the fact that you spent money to do something, this is not a factor we have to consider whether or not the project as proposed, satisfies what we need for a variance request. She added, there seems to be in the record documentation to show that where it is situated now because of the land, the septic system is a factor and so having it moved to a certain spot maybe necessary for that. She added, I guess, where I have some hesitation is not knowing that up front. She asked, why wasn't that investigated up front by your builder?

Chairman Hopkins asked if anyone else has any comments.

Chanelle Blaine stated that she had a comment. She said the Environmental Health Department, the people that look over the septic system provided a comment of no objection, but I want to read what else they said. She said the Department has no objection to proposed setback variance but due

to the limited unusable soil on the property, the Department has been working with Mrs. Mitchell on development of suitable septic system permits which was completed on 11/21/18. She added the house must be located as approved on permit to maximize available suitable septic areas in front left of site or septic permit will be invalid. She explained, if they said no objections, I usually just put that, but I wanted to make sure that you understood that the reason why she needs this is because she doesn't have enough suitable soils, and that came from the Director of Environmental Health.

Therol Brown stated that he had a couple of comments and maybe one (1) question. He said a couple of comments were made about taking down the trees, that's not an issue we are not here to address, taking down trees in Fayette County; in other counties in Georgia its not illegal. He added that most of us had trees taken down when we built our houses, but we can't address that. He stated, whether or not, me or other citizens approve the appearance of Mrs. Mitchell home, beauty is in the eye of the beholder. He re-emphasized that she said she going to make an attractive house, I don't know, but again for the Zoning Board of Appeals that is an issue than we must defer, the building inspectors and the code enforcement of the County must regulate that. He stated, the question I do have, and I think I heard one of the gentleman say that since 1981, there's never been a home on the property, is that correct. He added, I rode by and looked at the location, I couldn't tell if this was the first home or not, and obviously you can't destroy or interrupt the wetland, and as you said and the Corps of Engineers would prohibit that. He concluded, so her only option is, its looks to me is to request the variance, I think it is eight (8) feet for the front setback requirement.

Therol Brown asked Chanelle Blaine, did you say Environmental Health says you can put the septic tank in the space there?

Chanelle Blaine replied, they said that they did not have any objection to it and she did not have much useable soils, so the place they want to put the septic tank is really specific. She concluded, that is all I have.

Therol Brown replied, well, I interpret that to say they see it as appropriate.

Chanelle Blaine replied yes.

Tom Waller replied, this apparently is an established subdivision, is there a homeowners association or anything of that nature active in this subdivision. He said, okay there is not.

John Tate stated that I just have a comment from the rejections that I heard, that it appears that it had more to do with the appearance of the property. He stated, for the period of time that the construction has been going on and did not seem to be geared towards what our purpose is to determine if the variance itself is appropriate. He added and it appears from the all the information by Mrs. Mitchell that all of the necessary agencies and departments have reviewed this situation and there is no objection from their standpoint.

Bill Beckwith stated what makes it tough for us is that in some cases the homeowner or the property owner is not involved or not at fault when somebody builds something that supposed to be at the right location, that seems to be a civil issue but we are not going to deal with that. He stated we haven't dealt with that over the years, there have been some mistakes made and in some cases homes had to be moved, but those are extreme cases. He said the foundation survey is what sets the house on its location, and when the foundation survey was made apparently there was a mistake in

the footing and the block that are already put in there; so that just the issue that we have to look at is something that the homeowner will be penalized for, because of that, eight (8) foot difference. He concluded, so that's the concern we all have, which we have had in the past.

Therol Brown made a motion to approve Petition No. A-703-19. John Tate seconded the motion. The motion passed 5-0.

Bill Beckwith stated that Mrs. Mitchell, I hope you build a nice home for the neighborhood.

2. Petition No. A-704-19, Rhonda P. Cathy, Owner and Brett Baker, Agent, requests the following: Variance to Sec. 110-125.(d)(6) to reduce the side yard setback from 50 feet to 45 feet to allow an existing barn to remain. The subject property is located in Land Lot 181 of the 4th District and fronts on Mud Bridge Road.

Brett Baker (417 Rising Star Road, Brooks) stated that he is speaking on behalf of Rhonda P. Cathy. He stated that Rhonda Cathy has a barn on a piece of property that is traced back to 2009-2010. He said, it looked like Dan Cathy bought it first and transferred it over to Rhonda Cathy's ownership, who bought it from Mr. Green who lived on Mud Bridge. He added, the barn looked like it was constructed sometime in the 90s, I followed Google back as far as I could go, and the tax records showed a barn used to house tractors, equipment, and storage in 1990. He stated, the gentleman that works for Rhonda Cathy, Jeff Knowles wanted to put power to the building so I went to the Fayette County Building Department and talked with Steve Tafoya. He said to Steve, I got an old barn here I'd like to open a permit to get power to the barn for lights, etc. and upon that request he notified me that there were no permit records for new construction on that barn, let's get it into compliance, so he instructed me to hire an engineer. He then stated, that Dan Vines came out inspected the pole barn, metal with corrugated siding. He explained that he had written a letter, took it back to the Fayette County Building Department and then started going through the system and we found out that there was an encroachment. He further explained that pole barn showed on the tax map that is 39.8 feet, so at that point I reached out to Rochester, and they were able to go out and locate it. He stated that upon finding the encroachment we found it was 48.4 feet, there is a 50 foot setback, so we were encroaching on the corner of the barn. He added, so I requested a 45 foot variance, since there is no intention of adding or doing an addition to the barn, just the desire to have power to the barn. He explained, as part of the building process, you may have to create an as-built, if something has not been permitted, so I reached out to Jefferson Brown, who created an as-built which is attached to my paperwork. He noted that it shows the overall exterior of the structure, open storage where there is one (1) staircase to a second floor above it with barn doors in a hay-loft type scenario. He concluded, but that's what the variance is requesting, to set that setback at 45 foot so we are not encroaching into the buffer.

Chairperson Hopkins asked if there was anyone else to speak in support of the Petition.

Chairperson Hopkins asked if there was anyone to speak in opposition of the Petition, being none she turned the item to the members of the ZBA for discussion.

Bill Beckwith asked is that the big red barn behind the house isn't it.

Brett Baker replied yes it is.

Chairperson Hopkins stated that I have a question, I am not sure Chanelle if you know, on the attachments here where it has departmental comments, it has Environmental Health: Denied, so I guess my question is, does this situation have to be rectified before we proceed.

Chanelle Blaine replied, no, there was a septic tank permit pulled with the Environmental Health department, I don't think they ever put the septic tank down, but because they never called and told them that there was a hold on it. She explained up until the gentleman requested an electrical permit, they were under the assumption that septic had been put down without their reviewing.

She said Brett Baker says there was never any septic put down on the property, there is no bathroom or anything like that in the barn, so they will go out tomorrow, I believe at 9:45 am, to make sure that what he is saying is true. She concluded, I talked to Robert Kurbes and basically, if there is no plumbing, then the comments aren't needed.

Chairperson Hopkins replied okay.

Therol Brown stated, Brett, I think you answered one (1) of my questions, I read here that the barn was constructed over twenty years ago, yet I saw those plans, but those are as-build plans.

Brett Baker replied yes, they look new.

Therol Brown responded, so you are not building a barn. I am confused, in one place on the variance information sheet, Chanelle, we got that we are requesting a 12 foot variance.

Brett Baker replied that was provided by Jeff Collins with Rochester before we shot-it, at that point we were trying to get the variance paperwork in, so it was an estimate.

Therol Brown replied okay, was that filled out before.

Chanelle Blaine replied, yes.

Therol Brown replied, so my question was I saw on the survey sheet that it is 48.4 feet so really truly it just a little over a foot, so is it 45 feet.

Chanelle Blaine replied, yes, that is what he is requesting is 45 feet, a lot of times they are rushing to get the application in before the deadline.

Therol Brown replied, there are three (3) different figures and I couldn't figure out which one was correct.

Chanelle Blaine apologized for the confusion.

Chairperson Hopkins asked if there were any further questions.

Chairperson Hopkins asked if the members were ready for a motion.


John Tate made a motion to approve Petition No. A-704-19, a variance to Sec. 110-125.(d)(6) to reduce the side yard setback from 50 feet to 45 feet to allow an existing barn to remain. Therol Brown seconded the motion. The motion passed 5-0.

There being no further business, Therol Brown made the motion to adjourn the meeting.

The motion passed 5-0. The meeting adjourned at 7:41 pm.

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**


MARSHA HOPKINS, CHAIRPERSON


HOWARD L. JOHNSON, ZBA SECRETARY