

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on February 27, 2006 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Larry Blanks, Vice-Chairman
Tom Mahon
Ron Mabra
Vic Bolton

MEMBERS ABSENT: Bill Beckwith

STAFF PRESENT: Peter A. Frisina, Director of Planning & Zoning
Dennis Davenport, Assistant County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

Welcome and Call to Order:

Vice-Chairman Blanks 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. Oath of Office administered to Vic Bolton.

Assistant County Attorney Dennis Davenport administered the Oath of Office to newly appointed Z.B.A. member, Vic Bolton.

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2. Election of a Chairman for 2006.

Ron Mabra nominated Tom Mahon as Chairman. Vice-Chairman Blanks seconded the motion. Vice-Chairman Blanks made a motion to close the floor from nominations. Ron Mabra seconded the motion. The motion to elect Tom Mahon as Chairman passed 4-0. Bill Beckwith was absent.

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At this time, Vice-Chairman Blanks turned the public hearing over to Chairman Mahon.

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3. Election of a Vice-Chairman for 2006.

Ron Mabra nominated Larry Blanks as Vice-Chairman. Vic Bolton seconded the motion. Ron Mabra made a motion to close the floor from nominations. Vic Bolton seconded the motion. The motion to elect Larry Blanks as Vice-Chairman passed 4-0. Bill Beckwith was absent.

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4. Election of a Secretary for 2006.

Vice-Chairman Blanks nominated Robyn Wilson as Secretary. Ron Mabra seconded the motion. Vice-Chairman Blanks made a motion to close the floor from nominations. Ron Mabra seconded the motion. The motion to elect Robyn Wilson as Secretary unanimously passed 4-0. Bill Beckwith was absent.

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5. Consideration of the Minutes of the Meeting on December 19, 2005.

Chairman Mahon made the motion to table the Minutes until March 27, 2006 due to the lack of a full board. Ron Mabra seconded the motion. The motion unanimously passed 4-0. Bill Beckwith was absent.

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Chairman Mahon read the procedures that would be followed for presentation and opposition for petitions.

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6. Consideration of Petition No. A-560-06, Robert M. DeMine, Jr. And Carole M. Demine, Owners/Agents, request a 27'6" Variance to reduce the front yard setback from 75' to 47'6" to allow an existing oversized accessory structure to remain in the front yard; request a Variance to allow an existing oversized accessory structure (796 sq. ft. enclosed accessory structure with 396 sq. ft. overhead loft storage area plus 504 sq. ft. camper shed totaling 1,696 sq. ft.) to remain; and request a Variance to allow an existing oversized accessory structure to remain in the front yard. This property is located in Land Lot 121 of the 4th District, fronts on Friendship Church Road and Sovereign Trail (a private driveway), and is zoned A-R.

Chairman Mahon asked Mr. and Mrs. DeMine if they wanted to proceed forward or table due to the lack of a full board.

Robert DeMine replied that he would like to move forward. Mr. DeMine stated that he and his wife own the subject property and are requesting approval of the variances as previously stated. He read the following statement:

Gentlemen of the Board of Appeals, my name is Bobby DeMine and my wife, Carole, and I live at 166 Sovereign Trail or Lot 3 of Friendship Acres on Friendship Church Road in south Fayette County. We presume that each of you have had the opportunity to thoroughly read through our application packet and the support we have provided with each of the six (6) criteria. We also hope that each of you have taken the opportunity to personally make a site visit to see for yourself the location of the structure in question. If you did, we are certain that you will agree that the location and size of the structure is pleasing and useful in its proximity to the principal structure located at that address. We are here to request a variance concerning an existing oversized accessory structure located on our property. This structure was built for several purposes. I have put a lot of hard work, money, and effort into this building so that it first and foremost would be functional. It's main purposes are to provide me with a secure workshop area to store my woodworking and lawn and garden equipment. It also provides me a place to store my camper and gives us additional storage space for necessary occasionally used items. At this time, the structure is approximately 95% complete. We built this structure in the only location on our property that we felt gave us the full use of the building without having to sacrifice additional woods. Our lot is approximately 80% woods. The 20% that is not woods is taken up in our portion of Sovereign Trail and what was cleared for our principal residence. When building this structure, we wanted to ensure that we protected as much of the wooded space on our property as possible. We brought the house and property in 1995 from the Robinson family. Our house and two (2) other houses existed at that time. Since that time, another house has been added to these lots and all the houses face Sovereign Trail, not Friendship Church Road. This in itself gives anyone looking at the property the impression that all the lots face south toward Sovereign Trail and not Friendship Church Road. This was my impression when I started building my shop. I placed it approximately 50 feet off of the line, which I considered a side yard, not a front yard. We live approximately 2,000 feet off of Friendship Church Road, an unpaved road in this County. We live on a flag lot, that in itself, does not fit into the ordinance very well. The building was built to look like our house so that it adds value to our property and not to take away from it and the surrounding properties. I am sorry that I did not go

through all the proper channels when building the building; but, I am making every attempt now to come into compliance with the County requirements. I got into a hurry. I have studied the Zoning Ordinance the County uses to control the growth and development of this County. There are some items which are very clear and there are some that are very confusing. In reference to your front setback limits, the purpose, I believe, of a front setback limit is to protect the roadway which it fronts on. The road that I front on is over 2,000 feet, like I stated before, from my property; so technically the building is 2,047 feet off the roadway, the main road. The building itself and the countable square footage, the way the County counts it as being an oversized building, the definition for an accessory structure and a principal structure, a principal structure you only count what is closed in, that was my understanding. I did not think you had to count the garage or storage space which is technically an attic; but, when I started talking with Planning & Zoning about it, the reason why we have to count an accessory structure is everything that is under the roof line, including a carport. In the A-R district, at this time, on a five (5) acre lot, you can have two (2) accessory structures up to 900 square feet. If I wanted to build a barn, it could be up to 1,800 square feet. We even went whenever we found out that it was, and started working with Robyn Wilson, we discussed with Aaron Wheeler, who was the Zoning Ordinance Administrator, about how we could come into compliance and had worked up a solution where they allowed, if we cut the building in half, you could have one (1) be 900 and one (1) be 504. The reason why they count the actual space above the storage space is because I actually put a set of stairs going up to the thing and this is the reason I am having to count it. If it were pull down stairs, it would not be counted. Our lot is like we said, it is Lot 3 in a basically 20+ piece of property which was cut into four (4) lots. Like I said, the majority of it is wooded. When we bought the piece of property, we wanted to maintain as much woods as possible. If I have to tear the structure down and build another one, I have to remove woods that I am trying to protect. All I am trying to point here is that the ordinance for the most part helped to provide a framework to follow but there are pieces of property in this County that do not and will not fit into the ordinances perfectly. That is the reason why there is a Board of Appeals, to look into these cases and make individual determinations concerning them. If I had to do it over again, I would have followed all of the correct procedures to do it. I have suffered a lot of anguish and stress from this. I want to get this behind us. That is the reason why I wanted to go ahead with this and get a determination, one way or the other, whether or not I need to tear it down or you will provide a little grace and give me an opportunity to move forward with my structure as it now stands. Thank you.

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

Jack Norton of 158 Sovereign Trail, Lot 2, immediately and adjacent to Mr. DeMine's property, to the west, stated that he would like to ask for the Z.B.A.'s consideration to request this variance. He said that it is a nice structure and in no way, in his opinion and others, does it impair the usability of either piece of property or devalue his in any way. He commented that it definitely adds value to Mr. and Mrs. DeMine's property. He remarked that he heard Mr. DeMine state that there is over 2,000 feet of woods between the property line and the County road. He asked the Z.B.A. to consider carefully what Mr. DeMine has presented and to approve his request for a variance.

Chairman Mahon asked if there was anyone to speak in opposition of the petition. Hearing none and with no rebuttal required, he closed the floor from public comments.

Larry Blanks asked if the motion would consist of three (3) motions.

Chairman Mahon replied that there needs to be three (3) motions. He read the three (3) variance requests aloud.

Larry Blanks made a motion to approve Variance #1 (a 27.6' variance to reduce the front yard setback from 75 feet to 47.6 feet to allow an existing oversized accessory structure to remain in the front yard). He said that this is an extremely unique situation and the variances really all run together. He pointed out that Variance #3 which is requesting a variance to allow an existing oversized accessory structure to remain in the front yard, and this is a flag lot with access coming in off of the main highway, so technically you could stretch this to say that this is his front yard by

the book but realistically it is not a front yard; it is a side yard. He added that this was unique due to the lay of the land and because of the flag lot, which is no longer allowed.

Chairman Mahon asked Attorney Dennis Davenport if one (1) of the three (3) variances is denied, does it make the other two (2) variances void or moot.

Attorney Davenport replied that in order to make it clear on what is being allowed with respect to the first issue that Mr. Blanks was bringing up, if you are not going to allow an accessory structure in the front yard to begin with, then the issue of a variance to the front yard setback is moot. He said it seems that the Z.B.A. should at least discuss whether or not an accessory structure will be allowed in the front yard first because if the answer to that question is no, the front yard setback issue is moot; however, if the answer to that question is yes, then you still have to deal with the size of the structure.

Vic Bolton clarified that front is defined facing the road no matter what the orientation of the house may be, so the side that faces the street is considered front as far as the ordinance definition.

Chairman Mahon advised that the part of the property that faces Friendship Church Road would be the front yard. He asked Pete Frisina if this was correct.

Pete Frisina replied that Chairman Mahon was correct.

Mr. Blanks withdrew his motion. He made a motion to approve the location of an existing accessory structure to be located in the front yard. He reiterated that this is a unique situation and theoretically it is the front yard, but realistically it is 2,000 feet from the actual road that he is facing and there is another lot between him and the road, so it is unique and characteristic of the flag lot, which would not be out of line to grant a variance for that.

Mr. Bolton said he had done a lot of homework in preparing for tonight so he would not sound like the new guy every time he opened his mouth. He asked what kind of position would the Z.B.A. be putting themselves in if an exception is made on any case and what would this do to the Z.B.A. down the road when someone else in another area wants to do something similar. He said even if things are reoriented to the way the house faces, the accessory structure encroaches the setback.

Chairman Mahon advised that a second to the motion was needed before discussion was held. He asked Mr. DeMine if he was Lot 1, 2, 3, or 4.

Mr. DeMine replied Lot 3.

Chairman Mahon verified that none of Mr. Demine's property fronts on Lot 3.

Mr. DeMine replied that he has a 25 foot strip which runs all the way down.

Chairman Mahon commented that Mr. Blanks' concept does not apply.

Mr. Blanks replied "sure it does". He presented a copy of the flag lots, which was in the package, to Chairman Mahon.

Chairman Mahon stated that there was a motion to allow the existing accessory structure to remain in the front yard. He asked if there was a second.

Attorney Davenport confirmed that the motion was to allow an accessory structure in the front yard because if you say to allow the existing accessory structure that combines the second variance which is the size of the accessory and the motion should be to allow an accessory structure in the front yard.

He advised that if the motion is to allow an existing accessory structure to be located in the front yard then you are incorporating the setback and an oversized structure.

Mr. Blanks amended his motion to allow an accessory structure to be built in the front yard. Vic Bolton seconded the motion.

Mr. Blanks reiterated that this is a unique situation and Mr. Bolton had previously asked how the Z.B.A. defends this later on other things which have been done. He explained that when something is unique then consideration can be given to allow something like this to be given a variance. He said that, in the case of flag lots, this is very unique because we do not allow flag lots any longer in the County and there is a very good reason we don't and this is one of them. He added that he lives on a flag lot. He commented that this is setting no precedent and there are no issues that the Z.B.A. has to worry about on a unique situation, so we can allow this variance to go forward.

Mr. Bolton said that he seconded the motion because given the situation and the location of this property, which he has seen, that it would not be unreasonable for the accessory structure to be on that side of the house given the distance from the roadway and the wooded nature of the area. He added that this does open the Z.B.A. up for someone else to come and say that front is front, whether it is a mile away from the road or right on top of the road, and if you allow front here you have got to allow me to do front. He said it would be defensible based on the unique circumstances and for the positioning of this particular house.

Chairman Mahon told Mr. DeMine that he had a beautiful structure and it is well presented in terms of the presentation. He asked how this came before the Z.B.A. since the structure has already been built. He asked Mr. DeMine if he got a building permit for the accessory structure.

Mr. DeMine replied that there was a lot of extenuating circumstances that went into this and if he were to go into all of those you would probably go, O.K. In the condense version, he said that he had been planning since buying this property back in 1995, of building himself a workshop. He stated that he had never come up with a completed design. He commented that approximately four (4) years ago, his father, due to health reasons, went through some surgery and was required to move in with him and his wife. He remarked that his father had to sell his house and his father needed storage for his stuff from his house. He said his father starting asking, when are you going to build your shop. He commented that he was pressured into it and had come up with a hasty design and that is the reason why he went ahead. He said that he did go up and actually talk with the Building Department and Planning and Zoning about what he needed to do to actually come up with because he had a basic design and everything. He remarked that he was under the impression that the way his house faced being the front. He added that he took into consideration the 50 foot side yard and this is the reason he placed the accessory structure 50 foot off of it; however, when the survey was prepared the tail end of the accessory structure was over the 50 foot setback. He added that the front of the accessory structure is actually 50 foot off of it but the back tails into it and that is where you get the odd footage.

Chairman Mahon asked Mr. DeMine if he applied for a building permit.

Mr. DeMine replied "No sir, I did not". He said he made a quick decision and this is the reason why he is here today and he has faced the anguish and stress of it. He commented that he was sorry that he did it. He added that he made a hasty decision and he is trying to rectify the situation the best way he can.

Chairman Mahon reiterated that the structure is beautiful. He commented that it could not be seen from the street; however, he has problems with it. He pointed out that this is obviously a self-induced hardship rather than coming to the County and getting a building permit which would have told you what could be done and what could not be done. He advised that this is why this is a self-induced hardship. He said that whether or not the ordinance is right or wrong, the Z.B.A. does not write the ordinance but the Z.B.A. has to interpret the ordinance and defend their actions done now against others. He stated that their had been other properties which did not get a building permit and they have built too close and oversized, which are similar, and the Z.B.A. has turned them down. He added that he could not go along with the request.

Mr. Blanks stated that the Z.B.A. has granted structures to be located in the side yard when the County calls it a front yard in the past.

Chairman Mahon remarked that only on a corner lot with two (2) streets. He verified that Sovereign Trail was not a street.

Mr. Blanks said that Sovereign Trail was a private road.

Attorney Davenport advised that Sovereign Trail was a private drive and the County maintained road would be Friendship Church Road.

Chairman Mahon asked if this would be considered a corner lot.

Attorney Davenport replied "No, it is not".

Mr. Blanks said there had been a proposed road on a plat that did not exist beside a house and they wanted to build a garage there on Rivers Road. He added that this is not an issue and it is a service to the tax payer and homeowner to allow him to do this on his property which is down in the woods and a unique situation and this is something the Z.B.A. should do.

At this time, Chairman Mahon called for the vote. The vote was 2-2 with Chairman Mahon and Ron Mabra voting in opposition. Bill Beckwith was absent.

Chairman Mahon verified that the motion was a denial due to the lack of three (3) affirmative votes.

Attorney Davenport advised that the vote signifies that no matter what size the structure, or no matter how close it violates the front yard setback, the Z.B.A. has denied a variance request to allow the structure to be in the front yard at all, whether it is 900 square feet or less.

Chairman Mahon verified that there is not need to have a motion on the other two (2) variance requests.

Attorney Davenport replied, "that is correct".

Chairman Mahon asked what was the maximum time which the Z.B.A. can grant to the petitioner to bring the property into compliance.

Attorney Davenport replied that the maximum time frame is thirty (30) days.

Chairman Mahon advised that a motion was necessary to grant the maximum time frame.

Larry Blanks made a motion to allow the petitioner thirty (30) days to bring his property into compliance. Ron Mabra seconded the motion. The motion unanimously passed 4-0. Bill Beckwith was absent.

Chairman Mahon asked Mr. DeMine if he understood what had happened.

Mr. DeMine replied that he understood what happened. He stated that the ordinance allows a detached garage up to 900 square feet to be located in the front yard.

Chairman Mahon asked Attorney Davenport to clarify this statement.

Attorney Davenport stated that the accessory structure must be located within 35 feet of the principal dwelling and attached by a breezeway.

Chairman Mahon said that when you apply for a building permit you will learn these things, what

needs to be done in order to comply. He stated that the ordinance is a very thick manual.

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Mr. DeMine remarked that technically it is a PDF file which can be downloaded from the computer and you can read the ordinance manual which I have read very thoroughly to understand the ordinances.

Pete Frisina read part of Section 5-10.,C. Location on Lot as follows: A detached garage less than 900 square feet when connected by a breezeway and located within 35 feet of the principal dwelling can be located in the front yard.

Chairman Mahon asked how many feet was the accessory structure to the main structure.

Mr. DeMine replied 43 feet.

Mr. Frisina added that the existing accessory structure was larger than 900 square feet.

Mr. DeMine stated that it would be easily reducible to 900 square feet.

Chairman Mahon advised that this is something to work with Staff about and this cannot come up before the Z.B.A. for one (1) year. He said that this is why he used the verbiage "come into compliance" because he needed to work with Mr. Frisina, Mrs. Wilson, and Mrs. Harrison to assist him on coming into compliance.

Mr. DeMine stated that he had done this and he had hoped that the Z.B.A. would understand that the particular area about the front yard and the Z.B.A. is saying that this is not allowed when the ordinance states that it is allowed. He said that if he needed to apply for an eight (8) foot variance to allow the accessory structure to stay, he would have done that and made it a detached garage and it would be allowed to stay. He added that technically he would need the front variance which was the first request and not the last request.

Chairman Mahon advised Mr. DeMine that if he wanted to make the structure a garage and bring it into compliance that he should meet with the Staff. He said that the ordinance should have been looked at in advance. He confirmed that the motion did not carry forward. He added that Mr. DeMine was advised that there was not a full board present and he chose to go with a four (4) member board which would require three (3) to one (1) vote, but instead the vote was two (2) to two (2). He commented that the Z.B.A. was not in the design stage.

Attorney Davenport advised that there is nothing Staff can do to remedy his situation because his connection would require a variance because the accessory structure is too far away from the principal structure. He confirmed that the Z.B.A. has ruled that the structure cannot be located in the front yard; however, if it were within 35 feet, a variance would not be necessary. He added that Mr. DeMine must wait one (1) year before presenting a request for the same property.

Chairman Mahon stated that if Mr. DeMine can't make it work then it can't work.

Mr. DeMine thanked the Z.A.B. for their time. He also thanked Larry Blanks for his understanding.

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Chairman Mahon asked if there was any further business.

Pete Frisina advised that four (4) applications had been submitted for the March 27th Public Hearing.

There being no further business, Vic Bolton made the motion to adjourn the meeting. Larry Blanks seconded the motion. The motion unanimously passed 4-0. Bill Beckwith was absent. The meeting adjourned at 7:55 P.M.

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ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

TOM MAHON
CHAIRMAN

ROBYN S. WILSON
SECRETARY