

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on July 28, 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
Bill Beckwith
Tom Mahon
Larry Blanks

MEMBERS ABSENT: Ron Mabra, Vice-Chairman

STAFF PRESENT: Dennis Davenport, Assistant County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, ZBA Secretary/Zoning Coordinator

STAFF ABSENT: Kathy Zeitler, Director of Zoning/Zoning Administrator

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 the meeting held on June 23, 2003.

Bill Beckwith made the motion to approve the Minutes as circulated. Larry Blanks seconded the motion. The motion passed 3-0-1. Tom Mahon abstained from the vote due to being absent at the June 23rd Public Hearing. Ron Mabra was absent.

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Delores Harrison read the procedures that would be followed for presentation and opposition for petitions.

2. Consideration of Petition No. A-537-03, James and Brenda Allen, Owners/Agents, request a 48 foot Variance to reduce the front yard setback from a minimum of 75 feet to a minimum of 27 feet, and a Variance to allow an accessory structure to remain in its current location in the front yard without a breezeway for an existing illegal pole barn to be converted to a detached garage. This property is located in Land Lot 11 of the 5th District, fronts on Weldon Road and Clark Road, and is zoned A-R.

Chairman Bartosh advised Mr. Allen that there was not a full board present and asked if he wanted to table or go forward.

James Allen replied that he would like to go forward. He stated that the house was built about two (2) years ago. He apologized for starting the building without a building permit. He explained that when the house was built that he had extended the driveway in order to have room to park his R.V. with the intentions of constructing a cover, but he did not realize that a building permit was needed. He said he had been advised that the R.V. structure would have to be enclosed. He confirmed that he wanted to keep the building in its current location. He explained that his property is a nonconforming lot of record consisting of 1.735 acres zoned A-R which is a five (5) acre minimum. He further explained that the A-R setbacks reduce the buildable property to .29 acres. He noted that the current location is the only location for the detached garage. He pointed out that the back of the house sits approximately 1 to 2 feet from the minimum 50 foot side setback. He said that if the detached garage was any closer to the garage door on his house that the garages would not be functional. He reported that the air conditioning unit and the septic system and drain field lines were located on the other side of the house. He stated that the house is on a slab, so there is not a crawl

space or any storage, and the detached garage would be used for storage of the R.V., lawn mower, and lawn tools. He remarked that he has no other location for the detached garage. He requested approval of the two (2) variances and added that he would enclose the detached garage as required.

Chairman Bartosh asked if there was anyone to speak in favor of the petition. Hearing none, he 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 two (2) variances needed separate motions.

Chairman Bartosh advised that the first motion would deal with the front yard setback reduction.

Tom Mahon made a motion to deny the variance regarding the front yard setback reduction. Bill Beckwith seconded the motion.

Mr. Mahon stated that this situation is a self-induced hardship brought about by the petitioner. He said that approval would put the Z.B.A. in a serious conflict on variances considered in the past and future.

Mr. Beckwith concurred with Mr. Mahon. He noted that the variance amount from 75 feet to 27 feet was in excess, and that the Z.B.A. has heard similar requests on lots with two (2) front yards and the Z.B.A. has not set a precedent.

Chairman Bartosh advised that a side yard setback was 50 feet, and the Z.B.A. had granted relief on a side yard, but when it is called front they had to meet the setback requirements.

Mr. Beckwith advised that this was not a side yard by definition of the Zoning Ordinance, but a front yard.

Mr. Blanks asked where setbacks were measured from.

Robyn Wilson advised that the setback was measured from the right-of-way line/property line.

Mr. Blanks stated that the Certificate of Occupancy was issued for the house, and the driveway was existing for the parking of the R.V.

Mrs. Wilson advised that a driveway is not considered a structure and is exempt from setback requirements.

Mr. Blanks said that the yard where the R.V. cover was located was physically a side yard, and if it was a side yard the setback would be 50 feet. He stated that logically it is the side of his house, but unfortunately the way the Ordinance is written, the County considers it a front yard which makes no sense at all, but that is the Ordinance. He commented that if the Z.B.A. looked at this as if it was a side yard, which it is, then the variance would be less than 50% of the minimum setback for a side yard. He added that he did not see this as a dramatic reduction for a side yard from 50 feet to 27 feet.

At this time, Chairman Bartosh called for the vote. The motion for denial passed 3-1 with Larry Blanks voting in opposition. Ron Mabra was absent.

Chairman Bartosh advised that the next variance request was to allow the accessory structure to remain in its current location, which it can't. He asked Attorney Davenport if the Z.B.A. should rule on the variance.

Attorney Davenport replied that there probably was good reason to hear the variance request because while the Z.B.A. has said that the structure must comply with the front yard setback, until you have ruled on the placement of the structure in the front yard, it is open as to whether the structure would be allowed in the front yard at all. He added that the better course is to go ahead and hear the

variance with respect to placing an accessory structure in the front yard.

Chairman Bartosh asked Mr. Allen if he understood what the Z.B.A. had done thus far.

Mr. Allen replied yes sir.

Chairman Bartosh advised that the Z.B.A. had denied the variance request on the setback. He asked Mr. Allen if the Z.B.A. were to grant relief and allow the structure to be on the front yard side, which we might possibly hear a vote on this particular property to become a side yard rather than a front yard, if this would be of interest, and would the building be moved to the property setbacks at that time.

Mr. Allen replied that he would consider anything in order to be able to keep the structure. He stated that he would still be looking at a variance request even if the structure is moved because if he comes in from Weldon Road he could not get out of the setback because he would be too close to the house, so the structure would have to be turned toward the back, and the back of the house is almost on the setback line, so either way he would have to ask for a variance.

Mr. Beckwith asked Mrs. Wilson what constitutes a breezeway from a house to another structure.

Mrs. Wilson replied that a breezeway is a covered walkway such as a roofed open sided walkway.

Mr. Beckwith said that the R.V. cover appears to be about 46 feet from the house.

Chairman Bartosh advised that the issue here is that the structure cannot stay where it is based on the setback requirement for which a variance has already been denied. He added that the issue at this point is whether the Z.B.A. granted relief, as to if the gentlemen was to move the structure and request a variance to place it on that side of the house, but he would have to meet the setback standards of a side yard.

Attorney Davenport advised that there is no side yard under consideration, it is a front yard.

Chairman Bartosh asked if he was to be allowed to place the structure on the side would he still have to meet the 75 foot setback.

Attorney Davenport replied that it is still a front yard with a 75 foot setback.

Chairman Bartosh stated that the setback would be not be 50 feet but 75 feet from Weldon Road.

Attorney Davenport replied that was correct.

Mr. Beckwith stated that the second variance is to allow an accessory structure to be located in the front yard. He asked Attorney Davenport if the Z.B.A. were to approve the variance request to allow an accessory in the front yard, and it were to be attached to the house by a breezeway and be 35 feet from the house would that satisfy keeping the structure where it is.

Attorney Davenport advised that you would think denial of the first variance would foreclose consideration of the second variance, however, because it is possible to put the structure in the front yard and require less of a variance than requested tonight for the front yard setback, that issue is still open for discussion. He explained that if the Z.B.A. denied placement of the structure in the front yard period, then there is no variance that is going to help out this petitioner, but if they decided to allow the placement in the front yard, then there is the next question, what is the variance amount granted to him within the front yard, which will be a distance greater than 27 feet and less than 75 feet.

Chairman Bartosh asked if the structure was allowed in the front yard side, to clarify not anywhere in the front yard, that in viewing the structure could be placed on the side of the house, there is not

enough room whatsoever.

Attorney Davenport said that he was not looking at a survey but when you refer to side, you are referring to the side which faces Weldon Road.

Chairman Bartosh replied that was correct.

Attorney Davenport instructed Chairman Bartosh to take "side" out of his vocabulary because it confused the issue since it is a "front" yard.

Mr. Mahon stated that the Z.B.A. is getting into a wide open request. He said that the petitioner probably understood that the Z.B.A. may be open, but he would like to specifically see where the structure might be placed.

Mr. Beckwith said that he felt it is beyond the scope of the Z.B.A.'s duties to make any deals at all.

Mr. Blanks concurred.

Chairman Bartosh asked Attorney Davenport if it would be possible that the petitioner withdraw the second variance and come back at a later date with a revised request, or should it be voted on now.

Attorney Davenport advised that the Z.B.A. had the option, but the petitioner does not have an option to withdraw now, since the Z.B.A. had heard this request.

Mr. Beckwith asked if the Z.B.A. should table the variance tonight and revisit it at another time.

Attorney Davenport advised that it is within the Z.B.A.'s discretion to table the variance if there was a need for further information or further clarification in order to arrive at an informed decision. He said the Z.B.A. had to answer the question, would they allow an accessory structure at this location to be located in a front yard period, and there are two (2) front yards.

Mr. Beckwith asked if the only way it could be an accessory structure was if it were to be connected to the house by a breezeway and within 35 feet of the house.

Attorney Davenport advised that detached garages have to be a certain distance from the principal structure when located in the front yard, and the attached breezeway has been mentioned because the breezeway defines the detached garage as opposed to a hallway which would define an attached garage. He added that accessory structures are more than garages and this particular accessory structure is a garage and must be to the side or rear yard of the principal dwelling, attached by a breezeway, and within 35 feet of the principal structure. He said that the reason a breezeway is required is so that someone could have a detached garage that turns into a second home on the premises. He commented that the breezeway's proximity to the house defines the use of the detached garage in addition to the maximum size of 900 square feet. He remarked that if it were put to the side or the rear of the house, because that is where garages go, but if they wanted this accessory structure to be able to violate that standard and be in the front yard, they could do so, but there is more to it in the front yard because there is the 35 foot difference as well, but the specific question which needed an answer was are you going to allow this specific accessory structure on this specific property to exist in the front yard, and if the answer to that question is yes, you have got another question to answer, if the answer to that question is no, you are finished for tonight.

Chairman Bartosh stated that the Z.B.A. had determined that the second variance is a moot issue, so it does not require a vote from the Z.B.A.

Attorney Davenport advised that this is not a moot issue because they had talked about the difference between 50 feet and 75 feet and the difference between front and side, and all they had done so far was to tell this petitioner he could not have an accessory structure exist closer than 75 feet from the right-of-way line, but they had not told this petitioner that he could or could not have an accessory

structure in the front yard.

Mr. Mahon stated that if the Z.B.A. does something like that, then the Z.B.A. should vote on something where the Z.B.A. knows exactly where it is going to be placed on the lot. He added that he would like to see something specific, and the Z.B.A. should not vote because the petitioner had not shown them exactly where it would be located on the lot.

Attorney Davenport advised that the Z.B.A. should take this under consideration when determining how to handle this situation, because it is the petitioner's responsibility to bring that information to the Z.B.A.'s attention, and until that is a factor the Z.B.A. wants to certainly consider that because the Z.B.A. had to make their decision based upon the best information available, and if the Z.B.A. did not have the information available, then that is a factor to consider.

Mr. Blanks said he had a different opinion on the side structure. He asked if the Z.B.A. granted the variance to allow an accessory structure on the side of his house, which the County considers a front yard, then it had to meet the standards already in place which is the 75 foot setback. He stated that he did not know why the Z.B.A. needed to know the exact location as long as it fell within the parameters of the Ordinance.

At this time, Chairman Bartosh called for a motion.

Tom Mahon made a motion to deny the variance to allow an accessory structure to be located in the front yard. Chairman Bartosh seconded the motion.

Mr. Mahon commented that it would be dangerous for the Z.B.A. to vote on a phantom open-ended location.

Mr. Blanks stated that he had a problem with a side yard being called a front yard on a logical situation because it penalizes the homeowner.

Chairman Bartosh said that the Z.B.A. was debating the County Ordinances.

Mr. Mahon said that Mr. Blanks was discussing whether a front should be considered a side, but the Ordinance is written that way and only the Board of Commissioners could change it.

Chairman Bartosh asked Attorney Davenport if the variance was approved it would be up to the petitioner to specifically meet the setback requirements from Weldon Road.

Attorney Davenport replied that the Z.B.A. had not specified whether they are talking about Weldon Road or Clark Road, because he had two (2) front yards.

Chairman Bartosh called for the vote. The vote for the motion for denial was 2-2. Bill Beckwith and Larry Blanks voted in opposition to the motion. Ron Mabra was absent.

Mr. Mahon asked Attorney Davenport how this should be handled.

Attorney Davenport advised that the Z.B.A. could not affirmatively grant something through failure to achieve a denial with three (3) votes, and could not pass a negative vote, in other words, if this petitioner got any relief tonight it would be because three (3) board members voted affirmatively to do something. He said that with a 2-2 vote that technically the motion did not pass because three (3) affirmative votes are required for an approval.

Chairman Bartosh opened the floor for another motion.

Bill Beckwith made a motion to approve the variance as requested. Larry Blanks seconded the motion.

Attorney Davenport advised that with respect to the motion as stated to allow the accessory structure in the front yard with two (2) front yards, it could be in either front yard but must meet the 75 foot setback requirement.

Mr. Blanks pointed out that from Weldon Road to a particular area is 112 feet and that by granting the side variance, theoretically it could be built on the Weldon Road side.

Mr. Beckwith asked Attorney Davenport if the second variance was approved to allow an accessory structure in the front yard would the existing location be acceptable.

Attorney Davenport advised that the current placement of the existing structure would not be acceptable because it is 27 feet from the right-of-way.

Chairman Bartosh confirmed that the setback requirements would dictate the placement of the structure on the property.

Attorney Davenport replied correct.

Chairman Bartosh called for the vote. The motion for approval was passed 3-1 with Tom Mahon voting in opposition. Ron Mabra was absent.

Chairman Bartosh reported that since the structure was illegally placed, the petitioner had ten (10) days to remove the structure.

Attorney Davenport advised that was correct and the Z.B.A. could grant an extension of up to thirty (30) days to remove it.

Chairman Bartosh made a motion to grant Mr. Allen thirty (30) days to bring the existing structure into compliance. Larry Blanks seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

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Chairman Bartosh asked if there was any further business.

Robyn Wilson advised that no applications had been submitted for the August Public Hearing.

Larry Blanks asked the Z.B.A. to include Commissioner A.G. VanLandingham in their prayers and best wishes for him and his family.

There being no further business, Tom Mahon made the motion to adjourn the meeting. Bill Beckwith seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent. The meeting adjourned at 7:53 P.M.

Page 7
July 28, 2003

**ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY**

Respectfully submitted by:

**DAVID BARTOSH
CHAIRMAN**

**ROBYN S. WILSON
SECRETARY**