

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on November 26, 2018, 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: Channele Blaine, Zoning Administrator
Howard L. Johnson, Planning & Zoning Coordinator

Welcome and Call to Order:

1. Consideration of the Minutes of the Meeting held on October 22, 2018.

Therol Brown made a motion to approve the minutes. John Tate seconded the motion. The motion passed 5-0.

PUBLIC HEARING

2. Petition No. A-690-18, Jerry C. and Wanda W. Kemp, Owners, and Richard Kemp, Agent requests the following: Variance to Section 110-137. R-40, (d) (6) to reduce north side yard setback from 15 feet to three (3) feet to allow an existing wooden deck to remain. Variance to Section 110-137. R-40, (d) (6) to reduce south side yard setback from 15 feet to two (2) feet to allow an existing accessory structure to remain. The subject property is located in Land Lot 131 of the 5th District and fronts on Becky Court.

Richard Kemp stated that on the fifth anniversary of the adoption of their children, he and his wife wanted to build a playhouse for their children as a present. He mentioned he has a number of friends who have followed their efforts throughout the DCFS foster care system. He added that the playhouse idea started to gain a little more momentum and one of his friends who is a licensed general contractor said that he would love to build a playhouse for his children as a gift. He stated that when his family moved down here five (5) years ago from East Atlanta, where no one cared when you wanted to build something. He stated that he is an architect, and since we have a general contractor, he didn't think to look at issues relating to setback and permitting because it's an accessory structure. He added the playhouse is only 380 square feet, not ventilated, and does not have power.

Mr. Kemp added that his wife's dream is to become the house where all the children's friends congregate, and they saw this as the first step. He stated that they started to build the playhouse and it was now actually larger than they originally pictured. They found a piece of land on their property already cleared of trees and it seemed like the perfect place to put the playhouse. He added that he didn't want to cut down any trees or impede on the

natural drainage channel that runs through our yard to our lake. He stated that they started to build and it was constructed to be seven (7) feet tall on the backside. He said they kept the playhouse off of their fence. The playhouse came together over the course of a week and a half.

Mr. Kemp noted that they received a complaint from their neighbor to the south. They met with her, and came up with what they thought was a solution. He said that with regards to the playhouse, they now understand that it wasn't permitted. He noted that an architect, he can create an as-built drawing that documents everything done to build the playhouse. He added that he understands that the playhouse may have to go away. He said if it has to be dismantled, permitted, and rebuilt outside of the setback area, he is willing to do so. He stated that if there is a compromise that we can come to, we are open to that.

Mr. Kemp then described the deck which was the other part of the variance request. He stated that when they moved in they built a wooden deck to retain lawn equipment and to keep the equipment off the grass. He added that he did not think a deck which is only six (6) inches off the ground built three (3) feet away from a fence line would be an issue.

He stated that when all of this came up last October to meet with Chanelle Blaine and the Building Department. He stated he was told that in the future anytime you want to build something come talk to the County. He added that hindsight is 20/20 and anything that he wants to build in the future he certainly will talk to the County building department, but he respectively asked for some kind of consideration, since this building was built and has been a very significant financial outlay on their part. He stated that we are open to an amenable solution.

Marsha Hopkins asked if anyone else would like to speak on behalf of the project. Hearing none she asked if anyone would like to speak in opposition to it.

Barbara Morris (770 Becky Court) stated that she has good neighbors and she likes their children, likes them to play on my circular drive, and there is no problem with anything like that. She said that she had made a trip to England to take care of her brother until his death. She stayed there for two (2) to three (3) months and returned home to find the playhouse overlooking her yard located only (13) inches from her fence (based on her measurement). The overhang of the playhouse actually encroaches over the fence. She also noted that there are three (3) large windows overlooking her fence. She described her yard as beautiful and that she enjoys spending time there.

She initially met with Mr. Kemp and they both viewed the playhouse from her house. She noted the playhouse looked very pretty from their (front) side, however she described the playhouse as awful from her rear perspective of the playhouse. To improve her view

she requested that Mr. Kemp add-on to the existing fence, in a manner that would cover her view (back) of the playhouse. She stated that she would rather look at a taller fence than the back of the playhouse. She stated that she would work with him on meeting this request.

After three (3) months, she realized that Mr. Kemp was not going to do anything, so she went to the homeowner's association meeting (HOA). At the HOA meeting, she observed the manner that Mr. Kemp dealt with other issues, therefore she decided not to have any additional direct contact with Mr. Kemp. She said she felt ignored and no fencing was constructed. She stated she would have been satisfied with a taller fence to improve her view, despite the fact that the playhouse violated the 15 foot side setback rules. She also noted that the building was built on stilts. She suggested the playhouse could be taken off the stilts, lowered to ground level, moved four or five feet away, then it would not peer above the existing fence. She felt that the playhouse in its current location lowers her property value. The playhouse is an issue if she decided to sell. She noted that the structure could have been placed elsewhere in the rear yard since they have two (2) acres of land. She noted that they have plenty of land whereby to place the playhouse. In fact there is an above-ground swimming pool in the back yard, they could place the playhouse nearby. She felt since they have plenty of land they did not have to build the playhouse on stilts and against the fence.

Marsha Hopkins asked if anyone else wanted to speak in opposition of this petition. Barbara Morris stated that her son and daughter would speak in opposition.

Allan Feldman (175 North Jeff Davis, within Fayetteville City) stated that he has resided in old home Fayetteville for the past 40 years and spent 18 years on the City of Fayetteville Planning & Zoning Board.

He stated that in his view, the idea of children's playhouse is very worthy. However, this building should not be considered an accessory structure, because it will be occupied by people. He noted that since a permit was not issued on this structure, the inspection process was avoided, along with many other County regulations. He stated that the setback regulations are very basic regulations to any subdivision, and any licensed contractor should have first considered the minimum setbacks, required permits and inspections.

He emphasized his concerns, that if this variance is approved it will open a huge set of issues in the area of legal precedence. As a former member of the City of Fayetteville Planning Commission, he and other former members considered setbacks in a subdivision sacred, because people are already cramped. Setbacks are required for minimum protection. Although the building was built for a good purpose, the fact remains that it still violates the County ordinances. He asked that nothing more than the County ordinances be enforced. He referenced that Ms. Morris previously indicated that since the structure was built on

stilts, he suggested that maybe the County building inspector could determine whether the playhouse is built of a sufficient quality will safely allow children inside, maybe the playhouse can be moved without having to tear it down. He feels at it stands right now, this breaks every rule in the book, he doesn't see how any extenuating circumstances can outweigh the facts.

Marsha Hopkins asked if anyone else wanted to speak in opposition of this petition.

Loida Bonney (750 Becky Court) stated that she is the adjacent neighbor to the Kemp's on the opposite side from Ms. Morris. She stated that she felt she has been placed in a difficult situation because she loves her neighbors, the Kemps and their children and Ms. Barbara Morris, however she felt it would be wrong of her not to stand up against a slippery slope. She is concerned that possibly in the near future, another structure could be built up against the fence on the other (her) side, and therefore she feels that the law should be upheld. She stated that she expected that an architect should be familiar with the idea of obtaining a permit prior to starting construction. She was unsure whether Mr. Kemp was aware the process. She stated that she is certain that the Kemp family cares for their children and has seen this first hand, and she loves them as well. However, she is concerned about slippery slope of the variance, therefore she stands against the variance.

Marsha Hopkins asked if anyone else wanted to speak in opposition of this petition. Hearing none, she turned the petition to the Zoning Board of Appeals for discussion.

Tom Waller questioned whether the homeowners association had taken a position to this structure. Mr. Kemp responded stating that there is currently not a homeowners association (HOA) in the neighborhood. Mr. Kemp believed in 2009 there was a mechanism put in place to re-start an HOA, but it was not re-established. Currently, there is an ongoing effort to re-establish a HOA, but there is no current HOA body. He then stated that the lot size is quite large, but verified more than half of the lot is under water. He stated that is quite a reduction in the square footage that is available. Mr. Kemp affirmed this fact.

Mr. Kemp stated that the claim that the playhouse was built on stilts is not accurate. He stated that the side of the lot has a very severe downslope, the front of the playhouse is 4.5 feet above grade but the back of the playhouses at grade level. The fence and the contour rolls down.

Tom Waller asked if Mr. Kemp planned to store equipment under this playhouse. Mr. Kemp responded, no. Tom Waller asked Mr. Kemp whether his homeowner's insurance carrier has been advised and if his insurance rate increased. Mr. Kemp responded that he did not notify his insurance carrier because he considered the playhouse an accessory structure. Tom Waller also questioned the deck on the opposite side of the property. He asked if the

deck was covered. Mr. Kemp responded, no. Tom Waller stated that he was unaware of needing a deck to store equipment outside. Mr. Kemp responded that he used the deck to keep the lawnmower and lawn furniture accessories off the grass.

John Tate questioned why the playhouse was not placed elsewhere on the lot. Mr. Kemp responded that they wanted to keep the playhouse in close view of the back porch of the house to keep close watch of the children. The lot also has a large number of trees on the south side of the lot. The back yard is estimated about 200 feet deep and there a large stand of trees that run the length on the opposite side of the property. The current location was chosen because their neighbor to the south cut down all of the trees along the property line before the fence was built. He noted it was a nice bare spot which did not require tree clearance or disturbance to the drainage channel to the lake.

John Tate questioned the width of the yard north to south. Mr. Kemp estimated that it was in the 100 foot range. Bill Beckwith stated it was 133 feet.

Bill Beckwith questioned whether the contractor who built the playhouse was local. Mr. Kemp replied that he was a friend from North Carolina. Bill Beckwith made the comment that a good reputable contractor who builds a structure would investigate the setbacks and other regulations on a piece of property before putting a shovel in the ground. If that is the case, he did not do his job very well and he has violated the Ordinance with the playhouse.

Bill Beckwith questioned if he built the deck on the opposite side the lot. Mr. Kemp said that he built the deck more than five (5) years ago. He emphasized that Fayette County has ordinances that place requirements and regulations on a piece of property. He confirmed that he gave the contractor permission to build the playhouse when questioned by Bill Beckwith. Bill Beckwith stated that he understood there would be a cost involved in removing the playhouse however, the rules must be followed. If the ZBA could find another reason to mitigate the conflict, they would consider other options. He stated that he did not see any opportunity to mitigate the situation other than to move both the playhouse and the deck.

Marsha Hopkins commented that a denial should not reflect the ZBA members' personal feelings about the project itself, which is a noble undertaking. However, when they have Zoning Ordinances and hear variances, the members have to weigh whether a variance can be granted. If too many variances are granted, it would undermine the Zoning Ordinance, making the Ordinance not effective. Economic hardship and aesthetics are considered but the actual hardship is the key factor. She continued to state that lot setbacks are placed for a reason, and she takes setback restrictions very seriously because any neighbor also has a right to unobstructed view and the protected space intended with the setback. Building in the setback deprives the adjacent property owner of what they are entitled to provide by the

setback, which is a significant factor. She stated that she agrees with Bill Beckwith with not seeing the justification to support granting a variance.

Marsha Hopkins asked if there was any other comment from other ZBA members.

Bill Beckwith stated that he agrees.

Therol Brown concurred with Marsha Hopkins.

Marsha Hopkins asked if there is a motion.

Therol Brown made a motion to deny Petition A-690-18. John Tate seconded the motion. The motion passed 5-0.

Bill Beckwith questioned whether a second motion was needed.

Chanelle Blaine responded that second motion was necessary with the condition that the petitioner has 30 days to rectify the situation by moving the playhouse and the deck from the lot setback area or demolishing the structures. Once the structures have relocated or removed, the petitioner will submit pictures to the staff as evidence of the corrective action.

Chanelle Blaine clarified a question by stating that Mr. Kemp has the option to relocate the structures out of the setback area, as indicated by a survey and obtains a building permit. But the situation needs to be resolved in 30 days.

Therol Brown made a revised motion to deny both the playhouse and the deck structures with the added condition that the petitioner has 30 days to relocate or remove both structures. John Tate seconded the motion. The motion to deny passed 5-0.

Chanelle Blaine informed the Kemp's that they will receive the denial notices via email. She instructed them to provide to her photos or written notification that the structures have been moved. Mr. Kemp asked for an extension due to the upcoming year-end holiday season. Ms. Blaine responded that she would check with Pete Frisina, the Planning Director to see if a time extension would be granted, but to expect that an extension would not be granted.

- 3. Petition No. A-691-18, Kirk and Suzanne Goss, Owners, requests the following: Variance to Section 110-125 A-R, Agricultural-Residential District. (d) (6) to reduce rear yard setback from 50 feet to 46 feet to allow an existing shed to remain. The subject property is located in Land Lot 67 of the 4th District and fronts on Bankstown Road.**

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

Kirk Goss (248 Bankstown Road) stated that has lived in the County since 1984 and grew up on Harp Road, married and moved further south to the Brooks area, for the past 18 to 20 years.

He stated that he filed this petition for a variance in order to keep an existing 20' x 40' metal building to house lawn equipment and tractors used to maintain the property. The land was graded, a crusher-run pad was installed and the pad was topped with asphalt. The metal building was placed atop the asphalt and it was bolted-down securely to protect against high winds.

Mr. Goss stated that the variance that he is requesting is for the back corner of the building which encroaches into the rear yard setback area by four (4) feet.

Marsha Hopkins asked if anyone wished to speak in opposition to the petition. Hearing none, she turned to the ZBA members for discussion.

Tom Waller questioned the location of the closest house to the structure. Mr. Goss responded that the closest house belongs to his neighbor on his left hand side (facing the front of his house) is approximately 75 yards from the storage building. He explained that they both have five (5) acres lots.

Tom Waller asked whether the structure is visible to his neighbor. Mr. Goss responded that is barely visible because of a wooded swath that runs between the houses. The building is visible to the neighbors from the rear of their home, especially in the winter season.

Tom Waller also asked if the structure has plumbing or electricity. Mr. Goss responded that the structure is only a metal building with a roll-up door and 4 windows on the sides.

Therol Brown asked Mr. Goss if it was his intent to place the original foundation stake at the 50 foot mark, since one (1) of the two (2) corners was placed at the setback line. Mr. Goss responded that it was intentional, because he was told that the setback was 50 feet. So he placed the structure 50 feet from the property line based on his knowledge at that time, 10 to 11 years ago before the structure was built. Mr. Goss clarified the fact that the building footprint was turned during grading.

Marsha Hopkins clarified with Mr. Goss that the metal building has been in place 10 to 11 years and the setback encroachment was discovered when a new property survey was completed. Mr. Goss was in the process of permitting a new garage.

Bill Beckwith asked whether a string line was placed along the property line to determine the distance from the metal building to the property line, and whether it was 45 feet and not 50 feet. Mr. Goss stated that when he filed the paperwork to build a new garage (now underway), the building inspector came to the property and discovered that the existing metal building appeared to be too close to the property line. The inspector informed the applicant that he needs to resolve this issue prior to approval of the new garage permit. A surveyor was hired to locate the pins on every corner of the property and he created a modified drawing of the property boundaries. This new survey was used to determine the distance from the building to the property line. The line was offset 50 feet from the easement.

Marsha Hopkins asked if there were any additional questions from the other ZBA members.

Therol Brown asked if the original house was permitted and inspected. He also asked if there was any mention of being out of compliance with the 50-setback. Mr. Goss responded that the metal building was constructed about ten (10) years after the main house was built.

Marsha Hopkins asked if there were any additional questions.

Tom Waller made a motion to approve the request for the variance. Therol Brown seconded the motion. Motion passed 5-0.

Bill Beckwith inquired about the date of the next ZBA meeting. Chanelle Blaine responded that two (2) petitions next ZBA meeting will be held December 17th rather than December 24th.

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There being no further business, Bill Beckwith made the motion to adjourn the meeting, seconded by Tom Waller. The meeting adjourned at 7:45 pm.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Marsha Hopkins
MARSHA HOPKINS, CHAIRWOMAN

Howard Johnson
HOWARD JOHNSON, ZBA SECRETARY