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

2. Consideration of the Minutes of the Meeting held on July 22, 2019.

PUBLIC HEARING

3. Petition No. A-705-19, David L. Whorton, owner, and Tom Hoover, agent, request the following: (1) Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (5) to reduce the side yard setback from 15 feet to 0 feet on the north and west property lines. (2) Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (6) to reduce the buffer from 50 feet to 19 feet on the north property line and 18 feet on the west property line. (3) Variances, as applicable, for all existing structures and improvements to remain in anticipation of any platting which may be done in the future. The subject property is located in Land Lot 44 of the 7th District and front(s) on Sandy Creek Road and Sams Road.

4. Petition No. A-706-19, Kelvin Pavon, Owner, and Nancy Pavon, Agent, request the following: Variance to Sec. 110-79. (e) Residential accessory structures located in front yard, to allow an existing pool on a corner lot to remain. The subject property is located in Land Lot 229 of the 5th District and fronts on Thornton Drive.
PETITION NO. A-705-19
731 Sandy Creek Road
Fayetteville, GA 30214
Public Hearing Date August 26, 2019

The subject property is zoned C-C and is located at 731 Sandy Creek Road and also fronts on Sams Drive. The applicant is requesting Variances as follows:

Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (5) to reduce the side yard setback from 15 feet to 0 feet on the north and west property lines.

Variance to Sec. 110-143. – C-C, Community Commercial District. (d) (6) to reduce the buffer from 50 feet to 19 feet on the north property line and 18 feet on the west property line.

Variances, as applicable, for all existing structures and improvements to remain in anticipation of any platting which may be done in the future.

History:

The County first instituted zoning in August of 1960. Planning and Zoning is not in possession of a 1960 Zoning Map.

Tax assessor records indicate a commercial structure existed on this property in 1965 (Attachment 1).

Staff cannot find a rezoning petition for the subject property. No rezoning petition number is indicated on any available zoning map.

In October of 1971 a new Zoning Ordinance was adopted which contained a C-C (Community Commercial) zoning district.

The 1971 Zoning Map (Attachment 2) indicates C-C zoning at the northwest corner of Sandy Creek Road and Sams Road. The map is difficult to scale but the area zoned C-C appears larger than the 1980 zoning map.

A buffer was not required for Commercial zoning in the 1960 or 1971 zoning ordinances.

In November of 1980 a new Zoning Ordinance was adopted which contained a C-C (Community Commercial) zoning district. (Attachment 3)
The 1980 Zoning Map (Attachment 4) indicates C-C zoning at the northwest corner of Sandy Creek Road and Sams Road. The C-C area is a rhombus shape 200 feet by 200 feet following the angles of Sandy Creek Road and Sams Road.

A 30 foot commercial buffer was established with the 1980 zoning ordinance. It was increased to 50 feet with a 1998 review of the zoning ordinance.

The commercially zoned area was a portion of a larger parcel that is zoned R-70. The Tax Assessor created a parcel for taxing purposes to assess this C-C area as Commercial and remainder of lot as Residential. The parcel number for the commercial area contained a letter X which is the Tax Assessors practice to signify a portion of a parcel being taxed with a different use.

A Limited Warranty Deed from James M. Ivey to David Whorton and Maurine Whorton as Joint Tenants with Rights of Survivorship was recorder on 3/13/17 in Book 4580 Pages 297-298 (Attachment 5) fundamentally creating a two (2) acre parcel by subdividing it from a larger parcel. This deed contains a legal description for two acres and also contains a reference to an attached survey for two tracts, Per the Clerk of Court’s office no survey was submitted with the deed as an attachment. A Final Plat, as required by the Subdivision Regulations, was not submitted for this two acre parcel.

A Planning and Zoning staff member erred in approving the location of this proposed building on a Department of Environmental Health form for a septic tank review (Attachment 6). At the time the GIS map (Attachment 7) incorrectly indicated a larger area zoned commercial. The error was discovered during the Building Permit review.

In consultation with the County Administrator and County Attorney the following course of action was determined:

- The County will recognize generally the 200 foot by 200 foot area zoned C-C as a lot of approximately one (1) acre for building purposes.

- The property owner is proposing to build a 6,000 square foot building to store vehicles. The C-C zoning allows as a Permitted Use a “Parking garage/lot.” This building will be permitted as a “Parking garage/lot.”

- The property surrounding the C-C lot is zoned residential so a 50 foot buffer plus a 15 foot setback is required along those property lines. Any applicable variances from the ZBA will be necessary for approval of a non-residential site plan to construct this building. The setback along Sandy Creek Road is 75 feet and the setback along Sams Road is 65 feet.

- A non-residential site plan is required to be submitted and approved by the applicable departments for a building permit in non-residential zoning districts.
- The surrounding property is zoned R-70 requiring a two (2) acre minimum lot size. As this area is 43,578 square feet in size it is not a legal lot.

The applicant provides the following information:

**VARIANCE SUMMARY**

On March 3, 2017 current owner purchased a track of land that was divided into 2- one acre lots. Survey was furnished by previous owner, done by registered surveyor. Transfer of title (closing) was done by Lawson & Beck, LLC. Deed was recorded in book 4580, page 0297. One the lots contained a commercial building, built in about 1965, and used for years as a bait store.

Current tax records show the 2- one acre lots listed as 1- two acre lot, billed as commercial property. Owner is currently paying tax on a 2 acre commercial lot.

Owner purchased the land, including the building, for the purpose of storing (parking) his collection of antique cars and other collectables with the intent to build an additional building behind the existing building to house the remainder of his collection. The owner does not operate a business out of this location. Personal use only.

Before the building permit could be issued, the permit office required an approval of the site plan from Fayette Planning and Zoning.

Applicant met with P & Z a total of 3 times. At the first meeting applicant was informed that the subject property was a 2-acre lot zoned commercial, same as tax map. The current set-backs were front 65, sides 15', and rear was 15'. With these requirements outlined, we contracted with a registered surveyor to draw a site plan.

Next, at the second meeting with P&Z, we submitted the site plan for review. It was at that meeting we were informed that the one-acre lot that contained the building was commercial, but the other was residential. Per P&Z requirements, we were still able to fit proposed building on the one lot that contained the existing building. We contracted with the surveyor to modify the site plan per P&Z.

At the 3rd meeting we submitted the revised final site plan. P&Z signed off on the location of the building on the lot, which we submitted to the building department for permitting. At that time the owner went ahead with the purchase of the new building which required a 20% non-refundable payment.

Approximately 2 weeks later we were informed by the building department that P&Z had rejected our site plan due to a 50’ buffer rule. Nothing was ever mentioned about an additional 50’ buffer in any of our 3 meetings with P&Z. Due to the added 50’ buffer, the contracted building will not fit within the revised setbacks.
Pete Frisina, director of Fayette County Planning and Zoning, informed us we would need to apply for a variance.

Summary: Over the years more restrictive regulations have been placed on this lot, which in the early 1960s had little or no setbacks, has created a hardship. New regulations have increased minimal dimensional requirements, like front, rear, and side-yard setbacks or minimum lot size and street frontage. These amendments have severely restricted the existing property owners’ use of their land. Accordingly, municipalities often protect property owners from hardships created by zoning amendments by “grandfathering” existing building lots. Most typical zoning ordinances have a non-conforming use provision that would be considered grandfathering.

JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist.

1. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.**

   Over the years more restrictive regulations have been placed on this lot which have created a hardship.

2. **The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,**

   The current 50’ buffer only leaves small building area. Owner’s other lot surrounds this commercial lot on 2 sides.

3. **Such conditions are peculiar to the particular piece of property involved; and,**

   When property was zoned commercial the 50 foot buffer was not required.

4. **Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and**

   No detriment.
5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed.

As per Planning & Zoning, the subject lot is non-conforming and owner could not build based on current regulations.

DEPARTMENTAL COMMENTS

ENGINEERING/PUBLIC WORKS: No Engineering comments with direct applicability to the two variance requests, but please advise applicant that construction of a new building and/or parking areas may require bringing the driveway onto Sandy Creek Road into compliance with Development Standards. Currently the parking lot merges into the roadway over a 125-ft section.

In addition, Fayette County is considering intersection improvements for Sams Drive, Eastin Road, Trusting Lake Drive and Sandy Creek Road. This work, if authorized, may impact (not eliminate) access to and from the property. The idea with the most support is conversion of the intersections to a roundabout, although a concept has not been presented to, or approved, by the Board of Commissioners.

ENVIRONMENTAL HEALTH: No objections

ENVIRONMENTAL MANAGEMENT: No comments.

FIRE MARSHAL: The Bureau of Fire Prevention will neither approve nor deny request that fall outside the scope of ISO requirements.

WATER SYSTEM: No conflict.
Sec. 110-143. - C-C, Community Commercial District.

(a) **Description of district.** This district is composed of certain lands and structures providing for convenient community shopping facilities having a broad variety of sales and services.

(b) **Permitted uses.** The following uses shall be permitted in the C-C zoning district:

(1) Amusement or recreational facility, indoor or outdoor (see chapter 18);
(2) Appliance sales and incidental repair;
(3) Art studio;
(4) Auto parts and/or tire sales and installation;
(5) Bakery;
(6) Bank and/or financial institution;
(7) Banquet hall/event facility;
(8) Catering service;
(9) Church and/or other place of worship, excluding outdoor recreation, parsonage, and cemetery or mausoleum;
(10) College and/or university, including classrooms and/or administration only;
(11) Copy shop;
(12) Cultural facility;
(13) Day spa;
(14) Department store, variety store, and/or clothing store;
(15) Drug store;
(16) Educational/instructional/tutoring facilities, including, but not limited to: academic, art, computer, dance, driving and/or DUI school, martial arts, music, professional/business/trade, and similar facilities;
(17) Electronic sales and incidental repair;
(18) Emission testing facility (inside only);
(19) Firearm sales and/or gunsmith;
(20) Florist;
(21) Gift shop;
(22) Grocery store;
(23) Hardware store;
(24) Health club and/or fitness center;
(25) Jewelry shop;
(26) Laboratory serving professional requirements, (e.g., medical, dental, etc.);
(27) Library;
(28) Medical/dental office (human treatment);
(29) Messenger/courier service;
(30) Military recruiting office;
(31) Movie theatre (excluding drive-in);
(32) Museum;
(33) Office;
(34) Office equipment sales and/or service;
(35) Parking garage/lot;
(36) Personal services, including, but not limited to: alterations; barber shop; beauty salon; clothing/costume rentals; counseling services; electrolysis and/or hair removal; fitness center; laundry drop-off/pick-up; locksmith; nail salon; photography studio; shoe repair; and tanning salon.
(37) Plant nursery, growing crops/garden, and related sales;
(38) Printing, graphics, and/or reproductions;
(39) Private clubs and/or lodges;
(40) Private school, including, classrooms and/or administration only;
(41) Radio studio;
(42) Recording studio (audio and video);
(43) Restaurant, (including drive-in and/or drive-through);
(44) Retail establishment;
(45) Smoking lounge (subject to state and local tobacco sales and smoking laws);
(46) Taxidermist; and
(47) Television/movie studio.

(c) Conditional uses. The following conditional uses shall be allowed in the C-C zoning district provided that all conditions specified in article V of this chapter are met:
(1) Adult day care facility;
(2) Animal hospital, kennel (commercial or noncommercial), and/or veterinary clinic;
(3) Automobile service station, including, gasoline sales and/or inside or outside emission testing, in conjunction with a convenience store;
(4) Care home, convalescent center, and/or nursing home;
(5) Church and/or other place of worship;
(6) College and/or university, including, but not limited to: classrooms, administration, housing, athletic fields, gymnasium, and/or stadium;
(7) Commercial driving range and related accessories;
(8) Child care facility;
(9) Dry cleaning plant;
(10) Golf course (minimum 18-hole regulation) and related accessories;
(11) Home occupation;
(12) Hospital;
(13) Kennel (see animal hospital, kennel (commercial or noncommercial), and/or veterinary clinic);
(14) Laundromat, self-service or otherwise;
(15) Private school, including, but not limited to: classrooms, administration, playground, housing, athletic fields, gymnasium, and/or stadium;
(16) Religious tent meeting;
(17) Seasonal sales, outdoor;
(18) Single-family residence and residential accessory structures and/or uses (see article III of this chapter); and
(19) Temporary tent sales.

d) **Dimensional requirements.** The minimum dimensional requirements in the C-C zoning district shall be as follows:

(1) Lot area:
   a. Where a central water distribution system is provided: 43,560 square feet (one acre).
   b. Where central sanitary sewage and central water distribution systems are provided: 21,780 square feet (one-half acre).

(2) Lot width: 125 feet.

(3) Front yard setback:
   a. Major thoroughfare:
      1. Arterial: 75 feet.
      2. Collector: 70 feet.
   b. Minor thoroughfare: 65 feet.

(4) Rear yard setback: 15 feet.

(5) Side yard setback: 15 feet.

(6) Buffer. If the rear or side yard abuts a residential or A-R zoning district, a minimum buffer of 50 feet adjacent to the lot line shall be provided in addition to the required setback and the setback shall be measured from the buffer.

(7) Height limit: 35 feet.

(8) Screening dimensions for parking and service areas as provided in article III of this chapter and chapter 104.

(9) Lot coverage limit, including structure and parking area: 60 percent of total lot area.

STATE OF GEORGIA
COUNTY OF FAYETTE

LIMITED WARRANTY DEED

THIS INDENTURE made this 8th day of March, 2017 between

James M. Ivey

as party or parties of the first part, hereinafter called Grantor, and

David Whorton and Maurine Whorton as Joint Tenants With Right of Survivorship

as party or parties of the second part, hereinafter called Grantee (the words “Grantor” and “Grantee” to include their respective heirs, successors and assigns where the context requires or permits).

WITNESSETH that: Grantor, for and in consideration of the sum of TEN DOLLARS and other good and valuable consideration ($10.00) in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, the following described property:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 44 OF THE 7TH DISTRICT, FAYETTE COUNTY, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT A POINT FORMED BY THE INTERSECTION OF THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY), SAID POINT BEING THE TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING THUS ESTABLISHED, RUN THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A CURVE TO THE LEFT AN ARC DISTANCE OF 143.74 FEET TO A POINT; SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 49 DEGREES 40 MINUTES 51 SECONDS WEST A CHORD DISTANCE OF 143.68 FEET AND HAVING A RADIUS OF 1,503.41 FEET; RUN THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY) NORTH 52 DEGREES 35 MINUTES 51 SECONDS WEST A DISTANCE OF 76.10 FEET TO A POINT; RUN THENCE ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SANDY CREEK ROAD (A 60 FOOT RIGHT-OF-WAY) NORTH 52 DEGREES 35 MINUTES 51 SECONDS WEST A DISTANCE OF 184.19 FEET TO A POINT; RUN THENCE NORTH 37 DEGREES 02 MINUTES 36 SECONDS EAST A DISTANCE OF 231.35 FEET TO A POINT; RUN THENCE NORTH 89 DEGREES 08 MINUTES 35 SECONDS EAST A DISTANCE OF 182.42 FEET TO A POINT LOCATED ON THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY); RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) SOUTH 60 DEGREES 51 MINUTES 25 SECONDS EAST A DISTANCE OF 133.67 FEET TO A POINT; RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) SOUTH 60 DEGREES 51 MINUTES 21 SECONDS EAST A DISTANCE OF 3.20 FEET TO A POINT; RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A CURVE TO THE RIGHT AN ARC DISTANCE OF 254.08 FEET TO A POINT, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH 00 DEGREES 48 MINUTES 03 SECONDS EAST A CHORD DISTANCE OF 254.05 FEET AND HAVING A RADIUS OF 4,498.73 FEET; RUN THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAMS ROAD (A 60 FOOT RIGHT-OF-WAY) ALONG THE ARC OF A CURVE TO THE RIGHT AN ARC DISTANCE OF 47.75 FEET TO A POINT, SAID POINT BEING THE TRUE POINT.
OF BEGINNING, SAID ARC BEING SUBTENDED BY A CHORD BEARING SOUTH 04 DEGREES 44 MINUTES 34 SECONDS EAST A CHORD DISTANCE OF 47.74 FEET AND HAVING A RADIUS OF 630.95 FEET.

SAID TRACT OR PARCEL OF LAND CONTAINING 2.00 ACRES AND BEING SHOWN AS TRACT 1 AND TRACT 2 ON THAT CERTAIN PLAT OF SURVEY ENTITLED "SURVEY FOR JAMES M. IVEY" PREPARED BY FOUR CORNERS SURVEYING, RONALD T. GODWIN, GEORGIA REGISTERED LAND SURVEYOR NO. 2696, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A-1" AND INCORPORATED HEREIN BY REFERENCE FOR A MORE COMPLETE AND ACCURATE DESCRIPTION.

Subject to restrictive covenants and easements of record.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only proper use, benefit and behoof of the said Grantee forever in FEE SIMPLE.

AND THE SAID Grantor will warrant and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons claiming by through or under Grantor.

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal this first day and year first above written.

Signed, Sealed and delivered in the presence of:

Emily Woodworth

Notary Public

JUNE 22, 2020

Heather A. Doggett
Commission Expiring 06/22/2024
Notary Public

Book: 4580  Page: 297  Seq: 2
Attachment 6 - 1 of 2

FAYETTE COUNTY
ENVIRONMENTAL HEALTH

APPROVAL FOR CONSTRUCTION
(ADDITIONS AND ACCESSORY STRUCTURES)

HAVE YOU CONSULTED WITH ZONING? YES □ NO □ (PLEASE CHECK WITH ZONING BEFORE COMPLETING THIS FORM)

STRUCTURE TO BE BUILT (CHECK ONE)
Barn □ Garage □ Storage Building □ Addition to existing home □
Other □

OWNER
Name: DAVID L. WHORTON
Address: 731 SANDY CREEK RD
City & State: FAYETTE, GA
Sign: DAVID L. WHORTON
Phone: 
Zip Code: 

APPLICANT/CONTACT
Name: Tommy Hoover
Phone: 404-683-0437
Sign: Tommy Hoover
Email: 

SITE INFORMATION
*Include copy of plat showing all existing structures and proposed structures/addition locations.

Address of property to be inspected: 731 SANDY CREEK RD
Subdivision: 
Lot #: Lot Size:
Bedrooms: 
Garbage Disposal: Yes □ No □
Water Supply: Well □ Public □ Community □
Do you have any dogs? Yes/No □
Is there a security/gate code? Yes/No □

BUILDING INFORMATION
Length of Structure: 100' □ Width: 60' □ Stories: (1)
Number of Rooms: (1) □ Bedrooms: □ Baths: □

FOR OFFICE USE ONLY

COMMENTS (If any): No plumbing. Therefore no septic necessary.

Environmental Health Approval

Date: 01/1/19
David Whorton
731 Sandy Creek Rd
Fayetteville, GA

8-5-2019

Fayette County Planning and Zoning
Ref: 731 Sandy Creek Rd. Variance

I am the only adjacent property owner to subject commercial lot and have no problem with the 50 ft. buffer being removed.

Thank you

David Whorton

[Signature]

Notary:

[Notary's seal]

RALPH COLEY GENTRY
Notary Public - State of Georgia
Clayton County
My Commission Expires Apr 12, 2021
*External Email* Be cautious of sender, content, and links

Pete,

See attached. Seems Mr. Ivey paid the commercial tax free on address 731 Sandy Creek Road and it was listed as a one acre track. See attached.

Thanks, Eddie

*Lester Buildings*

Jordan Building Construction  
*Authorized Lester Buildings Dealer*  
Engineered Post-Frame Construction  
E. J. Lanham  
200 Carrington Ln., Brooks, GA. 30205  
770-265-8736  
www.jordanconstructionco.com

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Thanks Pete.
The closing attorney conveyed to me since the previous owner had paid tax for years on a one acre commercial lot, it was indeed considered a one acre lot.
Seems the county tax office has considered this a commercial lot since the mid-60s and the tax records I pulled were for a one acre lot.
If the county does not approve this building permit application, the owner will have to go back against the previous owner for selling him a one acre commercial lot that never existed as zoned commercial.
Thank you for attempting to make this work.
Does Mr Whorton's real estate attorney need to come to the Tuesday meeting?
Eddie
*External Email* Be cautious of sender, content, and links

Pete,
The tax office informed me that since 1998 subject lot, 731 Sandy Creek Rd, has been taxed as a one acre commercial lot. That was as far back as she could go.
Eddie

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On Friday, July 5, 2019, 01:01:44 PM EDT, Pete Frisina <pfrisina@fayetecountyga.gov> wrote:

Eddie,

At this time, the County Administrator just wants to discuss this with the County Attorney. I just wanted to update you so you would know that we are working on it. Please forward any other information you come across.

Thanks,
Pete Frisina
Please call me.
Do we have to go by the 200 x 200 or as you stated approximately one acre?
Also, where did this 50' buffer come from, as I presented to P&Z what was outlined to me by your office. Nothing was mentioned about an additional buffer plus 15 feet. That would make the setback on the west and north sides 65 feet??
Eddie

---

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Pete,

One thing I did not mention is that I wanted to make the zoning board aware that Mr. Whorton owns the lot that will be affected by the buffer and it is non-buildable.

Thanks, Eddie

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On Friday, July 5, 2019, 10:16:03 AM EDT, Pete Frisina <pfrisina@fayetecountyga.gov> wrote:

Eddie,

I got your phone message on Wednesday and the info in your e-mail, thanks. I spoke to the County Administrator this morning and he wants to discuss this with the county attorney. That meeting will take place on Tuesday. We are still researching for any historical information on the property.

Thanks,

Pete Frisina

---

From: Edward Lanham [mailto:ejlham@jordanconstructionco.com]
Sent: Wednesday, July 3, 2019 3:01 PM
To: Pete Frisina <pfrisina@fayetecountyga.gov>
Subject: 731 Sandy Creek Rd Fayette

*External Email* Be cautious of sender, content, and links

Pete,

See attached. Seems Mr. Ivey paid the commercial tax free on address 731 Sandy Creek Road and it was listed as a one acre track. See attached.

Thanks, Eddie

Lester Buildings
Jordan Building Construction
VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS:  DAVID L. WHITTON

MAILING ADDRESS:  250 Ashley Forest Dr. 30214

PHONE:  770-629-7184  E-MAIL:  

AGENT FOR OWNERS:  Tommy Hoover

MAILING ADDRESS:  1342 Tsalie Trail, Lake City Ga. 30260

PHONE:  404-683-0437  E-MAIL:  

PROPERTY LOCATION:  LAND LOT 44  LAND DISTRICT 7TH PARCEL

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY:  (2)

ZONING DISTRICT:  C-C

ZONING OF SURROUNDING PROPERTIES:  

PRESENT USE OF SUBJECT PROPERTY:  STORAGE

PROPOSED USE OF SUBJECT PROPERTY:  STORAGE

(THIS AREA TO BE COMPLETED BY STAFF):  PETITION NUMBER:  A-705-19

[ ] Application Insufficient due to lack of:

by Staff:  ____________________________  Date:  _________________

[✓] Application and all required supporting documentation is Sufficient and Complete

by Staff:  ____________________________  Date:  7/19/19

DATE OF ZONING BOARD OF APPEALS HEARING:  August 26, 2014

Received from ____________________________ a check in the amount of $______

for application filing fee, and $__________ for deposit on frame for public hearing sign(s).

Date Paid:  ____________________________  Receipt Number:  ____________________________
PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

(Applications require authorization by ALL property owners of subject property).

Name(s) of All Property Owners of Record found on the latest recorded deed for the subject property:

DAVID C. WHORTON

Please Print Names

Property Tax Identification Number(s) of Subject Property:

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the 7th District, and (if applicable to more than one land district) Land Lot(s) 44 of the District, and said property consists of a total of (9) acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Tommy Hoover to act as (my) (our) Agent in this request. As Agent, they have the authority to agree to any and all conditions of approval which may be imposed by the Board.

(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees become part of the official records of the Fayette County Zoning Department and may not be refundable. (I) (We) understand that any knowingly false information given herein by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. (I) (We) further acknowledge that additional information may be required by Fayette County in order to process this application.

Signature of Property Owner 1

250 ASHLEY FOREST DR.
Address FAYETTEVILLE GA, 30214

Signature of Property Owner 2

Address

Signature of Authorized Agent

1342 TIRALI TRAIL
Address LAKE CITY, GA, 30246

Signature of Notary Public

7-19-2019
Date

Signature of Notary Public

7-19-2019
Date

RALPH COLEY GENTRY
Notary Public - State of Georgia
Clayton County
My Commission Expires Apr 12, 2021
Variances to Sec 300-143. C-C (d) (5) to reduce the side yard setbacks from 15 feet to 0 feet on the north and west property lines.

Variances to Sec 300-143. C-C (d) (6) to reduce the buffer from 50 feet to 19 feet on the north property line and 18 feet on the west property line.

Variances, as applicable, for all existing structures and improvements to remain in anticipation of any platting which may be done in the future.
VARIANCE INFORMATION

Complete the chart below with the information pertaining to each request. If additional space is needed, please provide the information on a separate sheet of paper.

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<tr>
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VARIANCE SUMMARY

Provide a detailed and specific summary of each request. If additional space is needed, please attach a separate sheet of paper.

SEE ATTACHED
Fayette County

Summary of events leading up to why we are required to apply for a variance.

731 Sandy Creek Road, Fayetteville, GA
David Whorton, owner
7-18-2019

History

On March 3, 2017 current owner purchased a track of land that was divided into 2- one acre lots. Survey was furnished by previous owner, done by registered surveyor. Transfer of title (closing) was done by Lawson & Beck, LLC. Deed was recorded in book 4580, page 0297. One the lots contained a commercial building, built in about 1965, and used for years as a bait store.

Current tax records show the 2- one acre lots listed as 1- two acre lot, billed as commercial property. Owner is currently paying tax on a 2 acre commercial lot.

Owner purchased the land, including the building, for the purpose of storing (parking) his collection of antique cars and other collectables with the intent to build an additional building behind the existing building to house the remainder of his collection.

The owner does not operate a business out of this location. Personal use only.

Before the building permit could be issued, the permit office required an approval of the site plan from Fayette Planning and Zoning.

Applicant met with P & Z a total of 3 times.

At the first meeting applicant was informed that the subject property was a 2-acre lot zoned commercial, same as tax map. The current set-backs were front 65, sides 15’, and rear was 15’. With these requirements outlined, we contracted with a registered surveyor to draw a site plan.

Next, at the second meeting with P&Z, we submitted the site plan for review. It was at that meeting we were informed that the one-acre lot that contained the building was commercial, but the other was residential. Per P&Z requirements, we were still able to fit proposed building on the one lot that contained the existing building. We contracted with the surveyor to modify the site plan per P&Z.

At the 3rd meeting we submitted the revised final site plan. P&Z signed off on the
location of the building on the lot, which we submitted to the building department for permitting.

At that time the owner went ahead with the purchase of the new building which required a 20% non-refundable payment.

Approximately 2 weeks later we were informed by the building department that P&Z had rejected our site plan due to a 50’ buffer rule. Nothing was ever mentioned about an additional 50’ buffer in any of our 3 meetings with P&Z. Due to the added 50’ buffer, the contracted building will not fit within the revised setbacks.

Pete Frisina, director of Fayette County Planning and Zoning, informed us we would need to apply for a variance.

Summary: Over the years more restrictive regulations have been placed on this lot, which in the early 1960s had little or no setbacks, has created a hardship. New regulations have increased minimal dimensional requirements, like front, rear, and side-yard setbacks or minimum lot size and street frontage. These amendments have severely restricted the existing property owners’ use of their land. Accordingly, municipalities often protect property owners from hardships created by zoning amendments by “grandfathering” existing building lots. Most typical zoning ordinances have a non-conforming use provision that would be considered grandfathering.
JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Section 110-242 (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation as necessary.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

   OVER THE YEARS MORE RESTRICTIVE REGULATIONS
   HAVE BEEN PLACED ON THIS LOT WHICH HAVE
   CREATED A HARDSHIP

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship.

   THE CURRENT 50' BUFFER ONLY LEAVES
   SMALL BUILDING AREA.
   OWNER OTHER LOT SURROUND THIS
   COMMERCIAL LOT ON 2 SIDES.

3. Such conditions are peculiar to the particular piece of property involved.

   WHEN PROPERTY WAS ZONED COMMERCIAL THE
   50' BUFFER WAS NOT REQUIRED
4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein.

   NO DETRIMENT

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed.

   AS PER PLANNING + ZONING, THE SUBJECT LOT IS NON-CONFORMING AND OWNER COULD NOT BUILT BASED ON CURRENT REGULATIONS.
The subject property is zoned R-40 and located at 105 Thornton Drive. The applicant is requesting a Variance as follows:

Variance to Sec. 110-79. (e) Residential accessory structures located in front yard, to allow an existing pool on a corner lot to remain.

**History:** The subject property’s survey was recorded on August 13, 1973 in Plat Book 8 and Page 14. Tax Assessor’s records indicate that the applicant purchased the property in 2017.

As part of the permitting process for a building permit for an addition to the home, a survey is required. Through researching the property aerials of the home the violation was discovered. The aerials shows the pool foundation located in the front yard along Thornton Drive.

The applicant provides the following information:

**VARIANCE SUMMARY**

Provide a detailed and specific summary of each request. If additional space is needed, please attach a separate sheet of paper.

In July of 2017 I purchased what is now my home 105 Thornton Drive. I had discussed the possibility of just restoring and reselling this property with my wife, however during the restoration process my wife decided that this is where she wants to be. The house has become a beautiful place, the neighborhood is great so peaceful and quiet. We constantly have neighbors walk up to us, knock on our door, even getting out of their vehicles just to congratulate and compliment us on all our hard work. Which feels great, however we have four little hearts that are important to us and how they feel is what matters the most. Their happiness and wellbeing is everything to me.

When I first saw this house and I laid my eyes on that pool I just knew my children would feel just that, lots and lots of happiness. I love my children and I work hard every day for them, but going on vacation is not easy for this family of 6. Now when they’re in the pool they think it’s a vacation and we’re good with that. Recently, my wife lost her mother, she went into the care of Hospice in our home where she quickly passed away surrounded by all her loved ones, and the loves of her life my children who were completely devastated by their loss. As their father I am
committed to making them smile and laugh as much as I can so to see them do just that in our pool completes me. They like our new home they love being in the pool and I enjoy every second of their laughter and smiles in there.

JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Sec. 110-242. (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

We purchased our home located at 4105 Thornton Road, which is located on the corner of Thornton Drive and Kenwood Road in July 2017. We purchased this house was because it was unusual and different. One of the key reasons, that we purchased this house was the fact that that the house had an existing pool for use by our four (4) children. It was big deal for my four children. When I attempted to get a permit to place a roof over a grill area, it brought to our attention by the Planning and Zoning staff that the existing pool was located in the front yard along Thornton Drive. We were told that we needed to obtain a variance for the existing pool before getting a permit for a roof over the grill area.

Since our home is on a corner lot, we learned that we have two (2) front yards, and the pool was placed in the 2nd front yard along Thornton Road. We also learned that the pool was built by a previous owner or tenant most likely without a permit. It also projects out in front of the main house.

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and,

When we purchased the house the pool was already existing and we were unaware that the pool was constructed without a permit and a variance. The thought of even telling my kids that we may have to remove the pool will devastate them. We have invested time and money into the repairing and up keeping the pool, since it serves as our kid's vacation. The pools also keeps them active outside house as one alternative to playing video games.

3. Such conditions are peculiar to the particular piece of property involved; and,
Since the house and the pool sit on this particular corner lot, a variance is necessary to keep the pool since the most of the clear area lies along in front of the house in the 2nd front along Thornton Road. There is almost no area to place a pool either along the side or behind the house. Also, the house does not have a back door access the back yard, therefore the only access is through the grill / pool area. We were attempting to get a roof over the grill area, so my family can enjoy the pool, when the issue that the pools was located in the 2nd front yard came up.

4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land or building or structure that is prohibited by this Ordinance; and

This pool does not negatively impact my neighbors, in fact, my neighbors and their children use the pool quite often. Our neighbors have come to our door to compliment us on how we have beautified the house and help to improve the neighborhood. A variance will help to make us work harder beautifying our neighborhood. We ask for your understanding and help by granting us a variance for problem that we did not know existed because the pool was improperly built by a previous owner or tenant. Granting us the privilege to keep pool will not hurt the surrounding neighbors, or the community in general.

5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same District are allowed.

Granting us the privilege to keep the pool will not hurt the surrounding neighbors, or the community, in general. Allowing us to keep our pool, does not hurt our neighbors, since they also have a right to have a pool.

DEPARTMENTAL COMMENTS

ENVIRONMENTAL HEALTH: No comment.

ENVIRONMENTAL MANAGEMENT: No comment.

FIRE MARSHAL: The Bureau of Fire Prevention will neither approve nor deny request that fall outside the scope of fire prevention code requirements.

WATER SYSTEM: No conflict.
VARIANCE APPLICATION TO THE ZONING BOARD OF APPEALS

PROPERTY OWNERS: Kelvin Pavan

MAILING ADDRESS: 105 Thornton Dr, Flowery Branch, GA 30542

PHONE: 770-900-3489  E-MAIL: Kelvin.pavan40@gmail.com

AGENT FOR OWNERS: Nancy Pavan

MAILING ADDRESS: 105 Thornton Dr

PHONE: 770-900-3489  E-MAIL: 

PROPERTY LOCATION: LAND LOT 229  LAND DISTRICT 5TH PARCEL 05500001008

TOTAL NUMBER OF ACRES OF SUBJECT PROPERTY: 1.93 acres

ZONING DISTRICT: R-40

ZONING OF SURROUNDING PROPERTIES: R-40, AGR

PRESENT USE OF SUBJECT PROPERTY: Single Family Res

PROPOSED USE OF SUBJECT PROPERTY: Single Family Res

(This area to be completed by staff): PETITION NUMBER: A-706-19

[ ] Application Insufficient due to lack of:

by Staff: ____________________________ Date: ____________________

[ ] Application and all required supporting documentation is Sufficient and Complete

by Staff: ____________________________ Date: ____________________

DATE OF ZONING BOARD OF APPEALS HEARING: August 26, 2019

Received from _______________________________ a check in the amount of $_________

for application filing fee, and $_______________ for deposit on frame for public hearing sign(s).

Date Paid: ____________________________ Receipt Number: _____________
PROPERTY OWNER CONSENT AND AGENT AUTHORIZATION FORM

(Applications require authorization by ALL property owners of subject property).

Name(s) of All Property Owners of Record found on the latest recorded deed for the subject property:

Helton Pozo
Carmen Rivas

Please Print Names

Property Tax Identification Number(s) of Subject Property: 055 00 1008

(I am) (we are) the sole owner(s) of the above-referenced property. Subject property is located in Land Lot(s) of the District, and (if applicable to more than one land district) Land Lot(s) of the District, and said property consists of a total of acres (legal description corresponding to most recent recorded plat for the subject property is attached herewith).

(I) (We) hereby delegate authority to Lolo Pozo to act as (my) (our) Agent in this request. As Agent, they have the authority to agree to any and all conditions of approval which may be imposed by the Board.

(I) (We) certify that all of the information filed with this application including written statements or showings made in any paper or plans submitted herewith are true and correct to the best of (my) (our) knowledge and belief. Further, (I) (We) understand that this application, attachments and fees become part of the official records of the Fayette County Zoning Department and may not be refundable. (I) (We) understand that any knowingly false information given herein by me/us will result in the denial, revocation or administrative withdrawal of the application or permit. (I) (We) further acknowledge that additional information may be required by Fayette County in order to process this application.

Signature of Property Owner 1

Signature of Notary Public

Address

Signature of Property Owner 2

Signature of Notary Public

Address

Signature of Authorized Agent

Signature of Notary Public

Address

Date

Date
VARIANCE INFORMATION

Complete the chart below with the information pertaining to each request. If additional space is needed, please provide the information on a separate sheet of paper.

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<td>Sec. 110-179 (c)</td>
<td>Residential nursing structure in front yard</td>
<td>Parent moved</td>
<td>25 feet</td>
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</table>

∑ VARIANCE SUMMARY

Provide a detailed and specific summary of each request. If additional space is needed, please attach a separate sheet of paper.
JUSTIFICATION OF REQUEST

The Fayette County Zoning Ordinance, Section 110-242 (b) states that in order to grant a variance, the Zoning Board of Appeals shall and must find that all five (5) conditions below exist. Please read each standard below and then address each standard with a detailed response. Attach additional information/documentation as necessary.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography.

2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship.

   The unnecessary hardship my family would face is my children knowing and seeing the pool, yet never being able to enjoy it, and the constant explanation knowing that they would never truly understand.

3. Such conditions are peculiar to the particular piece of property involved.
1) Extraordinary and exceptional conditions

We purchased our home located at 4105 Thornton Drive, which is located on the corner of Thornton Drive and Kenwood Road in July 2017. We purchased this house because it was unusual and different. One of the key reasons, that we purchased this house was the fact that the house had an existing pool for use by our four (4) children. It was big deal for my four (4) children.

When I attempted to get a permit to place a roof over our grill area, it was brought to our attention by the Planning and Zoning staff that the existing pool was located in the 2nd front yard along Thornton Drive. We were told that we needed to obtain a variance for the existing pool before getting a permit for the roof over the grill area.

Since our home is on a corner lot, we learned that we have two (2) front yards, and the pool was placed in the 2nd front yard along Thornton Road. We also learned that the pool was built by a previous owner or tenant most likely without a permit. It also projects out in front of the main house.

2) Unnecessary hardship

When we purchased the house the pool was already existing and we were unaware that the pool was constructed without a permit and a variance. The thought of even telling my kids that we may have to remove the pool will devastate them. We have invested time and money into repairing and up-keeping the pool, since it serves as our kid’s vacation. The pools also keeps them active outside house as one alternative to playing video games.

3) Conditions peculiar to this particular property

Since the house and the pool sits on this particular corner lot, we need a variance to keep the pool. Unfortunately, most of the clear and open area lies in front of the house in the 2nd front yard along Thornton Road. There is almost no area to place a pool either along the side or behind the house. Also, the house does not have a back door access to the back yard, therefore the only access is through the grill / pool area. We were attempting to get a roof over this grill area, so my family can enjoy the pool, when the issue that the pools was located in the 2nd front yard came up.

4) Detriment to the Public

This pool does not negatively impact my neighbors, in fact, my neighbors and their children use the pool quite often. Our neighbors have come to our door, to compliment us on how we have beautified the house and help to improve the neighborhood. A variance will help to make us work harder beautifying our house.

We ask for your understanding and help by granting us a variance for problem that we did not know existed because the pool was improperly built by a previous owner or tenant.

5) Rights of others in same zoning district

Granting us the privilege to keep pool will not hurt the surrounding neighbors, or the community, in general. Allowing us to keep our pool, does not hurt our neighbors, since they also have a right to have a pool.
In July of 2017 I purchased what is now my home at 105 Thornton Dr. I had discussed the possibility of just restoring and reselling this property with my wife; however, during the restoration process, my wife decided that this is where she wants to be.

The house has become a beautiful place, the neighborhood is great and so peaceful and quiet. We constantly have neighbors walk up to us, knock on our door, even getting out of their vehicles just to congratulate and compliment us on all our hard work. Which feels great however we have 4 little hearts that are important to us and now they feel is what matters the most. Their happiness and well being is everything to me.
When I first saw this house and I layed my eyes on the pool I just knew my children would feel just that, lot's and lot's of happiness. I love my children and I work hard everyday for them, but going on vacation is not easy for this family of 6. Now when they're in the pool they think it's a vacation and we're good with that.

Recently, my wife lost her mother and she went into the care of hospice in our home where she quickly passed away. Surrounded by all her loved ones and the love of her life, my children were completely devastated by their loss.

As their father I am committed to making them smile and laugh as much as I can. So to see them do just that in our pool completes me. They like our new home and I enjoy every second of their laughter and smiles in there.
Prepared By:
William Curphey
Curphey & Badger PA
1820 Water Place, Suite 270
Atlanta, Georgia 30339

Return to:
Lenders Title Solutions
25400 U.S. Hwy 19 N. Suite 245
Clearwater, FL 33763

Mail Tax Statements To:
Kelvin Ivan Pavon and Carmen J. Rivas
6091 Autumn Green Dr.
Fairburn, GA 30213

Property Tax ID#: 055001008
Order #: L-90306

WARRANTY DEED

This indenture made and entered into on this the 21st day of July, 2017, by
and between SUB-UDOM PROPERTIES, INC., Grantors, and KELVIN IVAN PAVON, a married
person, and CARMEN J. RIVAS, an unmarried woman, Joint Tenants, whose address is 6091 Autumn
Green Dr., Fairburn, GA 30213, Grantees.

Witnesseth:

That for and in consideration of the sum of ONE HUNDRED SIXTY SIX THOUSAND and
00/100 ($166,000.00) Dollars and other good and valuable considerations, cash in hand paid, receipt of
which is hereby acknowledged, the Grantors have this day bargained and sold, and by these presents, does
hereby sell, transfer and convey unto the said Grantees, Grantees’ successors and assigns in fee simple,
the following described real estate:

SEE COMPLETE LEGAL ATTACHED AS EXHIBIT “A”

Property Address: 105 Thornton Drive, Fayetteville, GA 30214
To have and to hold the said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise pertaining to the only proper use, benefit, and behalf of Grantees, Grantees' heirs, executors, administrators and assigns in fee simple. And the said Grantors, their heirs, executors and administrators, the said bargained premises onto the said Grantees, Grantees' heirs, executors and administrators; and all and every person or persons shall and will warrant and forever defend by virtue of these presents.

Signed, sealed, and delivered in the presence of:

Unofficial Witness

Print Name

Notary Public

Print Name

My Commission Expires: 2/20/21

SUB-UDOM PROPERTIES, INC.

By Vasana Smiti

No title search was performed on the subject property by the preparer. The preparer of this deed makes neither representation as to the status of the title nor property use or any zoning regulations concerning described property herein conveyed nor any matter except the validity of the form of this instrument. Information herein was provided to preparer by Grantors/Grantee and/or their agents; no boundary survey was made at the time of this conveyance.
EXHIBIT “A”

SITUATED IN THE CITY OF FAYETTEVILLE, COUNTY OF FAYETTE, STATE OF GEORGIA.

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 229, OF THE 5TH DISTRICT, FAYETTE COUNTY, GEORGIA, BEING LOT 27, BLOCK A, BETHSAIDA WOODS SOUTH, UNIT ONE, AS PER PLAT OF SURVEY BY ESTON PENDLEY, DATED 9/7/73, RECORDED IN PLAT BOOK 8, PAGE 14, FAYETTE COUNTY RECORDS, SAID PLAT IS EXPRESSLY INCORPORATED HEREIN AND MADE A PART OF THIS DESCRIPTION BY REFERENCE; AND BEING PRESENTLY KNOWN AS 105 THORNTON DRIVE, FAYETTEVILLE, GEORGIA 30214, AND BEING MORE PARTICULARLY SHOWN ON A SURVEY FOR REX W. PIERCY BY KOONS, WOOD & ASSOCIATES, DATED 7/12/85.

Also known as 105 Thornton Drive, Fayetteville, GA 30214

Parcel ID # 055001008