

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on October 23, 2006 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Tom Mahon, Chairman
Larry Blanks, Vice-Chairman
Bill Beckwith
Vic Bolton

MEMBERS ABSENT: Ron Mabra

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

STAFF ABSENT: Dennis Dutton, Zoning Administrator

Welcome and Call to Order:

Chairman Mahon 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 March 27, 2006.

Larry Blanks made the motion to approve the Minutes as circulated. Bill Beckwith seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

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

2. Consideration of Petition No. A-565-06, Donald Payne, Owner, and Gregory Swint of Brandon Homes, Agent, request an eleven (11) foot Variance to reduce the front yard setback along Sandy Creek Road from a minimum of 75 feet to a minimum of 64 feet to allow an existing single-family dwelling under construction to remain. This property is located in Land Lot 72 of the 7th-District, fronts on Sandy Creek Road and Adams Road, and is zoned R-70.

Chairman Mahon asked the applicant, Gregory Swint if he would like to proceed or table the petition until the next public hearing date due to the lack of a full board. He explained to Mr. Swint that if the vote was 2-2 then the petition fails.

Gregory Swint, builder for Brandon Homes, replied that he would like to go forward. He requested an eleven (11) foot variance for the property located on Adams Road, Lot 1 of Tomlin Estates. He said he was building the house for Donald Payne. He commented that the property was unique in that Sandy Creek Road is considered a front yard; however, the plat indicates no access to Sandy Creek Road. He remarked that based on this information, he considered Adams Road the front of the house and the house faces Adams Road and Sandy Creek Road was considered a side yard. He noted that after a HVAC inspection, it was brought to his attention that he may be out of compliance with the setbacks. He said he immediately went and spoke to Pete Frisina regarding this issue to discuss the possibilities of correcting this issue. He confirmed that in eleven (11) years of building in Fayette County he had never had a situation where he was out of the ordinance. He told Mr. Frisina that he looked at Sandy Creek Road as a side yard. He said Mr. Frisina asked if there was any property which could be purchased; however, he replied no because the property abuts Sandy Creek

Road. He stated that Mr. Frisina suggested to move the house. Mr. Swint presented a picture showing the current state of the house which has gone through a footing inspection and a foundation inspection which were approved. He pointed out that the house has been framed and the windows are installed, as well as, the HVAC, plumbing, and electrical which have all been inspected. He said that the house could possibly be torn down and he could start over; however, this is not practical. He noted that he was over the \$200,000 mark on this project as it stands today and will probably spend twice that to get back to the same stage when you take into consideration of demolition and starting all over again. He stressed that there were many obligations with the loan company, as well as, with his client. He said the option is possible but is not practical. He commented that Mr. Frisina asked if eleven (11) feet of the house could be removed. Mr. Swint presented pictures of the front elevation, roof line, and floor plan showing the impact of removing eleven (11) feet of the house. He said that the house has three (3) bedrooms and two (2) baths and by removing eleven (11) feet of the house, it would reduce the house to two (2) bedrooms and two (2) baths. He added that he would lose the garage as well. He stated that perhaps eleven (11) feet could be removed; however, with the details of the large roof line it would be almost impossible to redesign the house in order to get a roof to fit.

He commented that these are his options. He said that this is a very different and exceptional situation. He remarked that he was sorry for the inconvenience and oversight of the foundation survey which he has done every time. He noted that to move the house or remove part of the house is not practical and creates an unnecessary hardship for a small builder. He stressed that this could really impact his client, his business, and more importantly, his family. He said he was asking for forgiveness, as well as, the granting of the variance and to be able to continue to build this house as it stands currently.

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

Donald Payne, owner, said that there were probably a lot of questions as to how this happened. He stated that as the owner of the property, has a loan to build what is a nice dream home. He commented that this is extremely frustrating and could mean financial ruin. He confirmed that more money had been spent between the home and lot than what was quoted by Mr. Swint. In addition, he said that the cost of tearing down the house would literally bankrupt him. He noted that the loan was in his name and the house must be finished according to the specifications with no modifications. He remarked that he knew these were things he wanted the Z.B.A. to know. He said that the front of the house actually faces Adams Road and not Sandy Creek Road. He stated he did not understand the County saying it faces Sandy Creek Road. He added that the side of the house was on Sandy Creek Road. He commented that since this is a corner lot he was asking the Z.B.A. to carefully consider grating the variance.

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

Fred Chastain of 165 Sandy Lake Circle said he was not really against or in favor of the variance but asked how the house got to this point since it passed the footing and foundation inspections.

Hearing no further comments, Chairman Mahon closed the floor from public comments.

Chairman Mahon asked Mr. Swint to explain the chronological order of events.

Mr. Swint replied that he obtained a building permit then had a footing inspection and foundation inspection. He said he called for a HVAC inspection and the building inspector had come out once and on the second visit he was told that there appeared to be a problem with the setback from Sandy Creek Road.

Chairman Mahon pointed out that the plat dated 04/12/06 shows a building line of 75 feet from Sandy Creek Road and asked Pete Frisina what happened next.

Mr. Frisina replied that it was his understanding from the Building Department that an initial foundation inspection was performed before the foundation was poured. He confirmed that a

foundation survey was required to be submitted prior to framing or anything else took place. He said

Page 3

October 23, 2006

when the Building Department went out for the rough mechanical or plumbing inspection, it was turned down because there was not enough information and at that point after they came back to the office they realized that a foundation survey had not be submitted and advised Mr. Swint that there was a possible problem with the setback.

Chairman Mahon asked Mr. Swint if he was aware of the document he had signed which required a foundation survey.

Mr. Swint replied affirmatively.

Chairman Mahon advised that the requirement of a foundation survey had been enacted early in the year to prevent things like this from happening.

Mr. Swint replied that he understood; however, this was an oversight and there is no other explanation. He added that even after the foundation was inspected and the HVAC was inspected, there was nothing brought to his attention at that point. He apologized for this happening and added that in his whole time of building that this is the first time he had ever had an issue with setbacks.

Chairman Mahon asked Mr. Swint how long he had been building in Fayette County.

Mr. Swint replied eleven (11) years.

Chairman Mahon asked Mr. Swint if he was aware that Fayette County is very strict on code enforcement.

Mr. Swint replied that Fayette County is definitely strict on their policies and he tries to abide by every one of them. He said in his heart he believed that there are exceptions and this is why the Z.B.A. is here. He added that if he could do it all over again he would but at this point he can't and all he can do is ask the Z.B.A. for forgiveness so he can move forward. He stressed that there is a lot of impact based on the Z.B.A.'s decision on him, his client, and his family. He asked that this be taken into consideration.

Bill Beckwith pointed out that the plat indicates a 75 foot building setback from Sandy Creek Road and Adams Road and the house is indicated at 116 feet from Sandy Creek Road.

He said that when the foundation was put in that they hit rock and the house was moved over some; however, knowing that there was no access to Sandy Creek Road, it was considered a side.

Mr. Beckwith reiterated that there was a 75 foot setback indicated for both roads. He asked Mr. Frisina how a foundation survey was prepared and by whom.

Mr. Frisina replied that a foundation survey is the responsibility of the property owner or builder to hire a surveyor who surveys the property and to the closest point on each side of the structure to the property line, indicates the exact distance, and signs and seals the survey. He advised that the foundation survey is submitted to the Planning & Zoning Department and the Engineering Department for compliance of setbacks and watershed protection buffer or anything of that nature.

Larry Blanks asked if there were any provisions in place that any subsequent inspections would not take place until the foundation survey has been submitted and approved.

Mr. Frisina replied that the inspections which Mr. Swint talked about only occur after the framing has been done and the house had already been framed. He said that after the foundation was poured the foundation survey was required prior to framing.

Vic Bolton asked if no access to Sandy Creek Road was a restriction or design.

Mr. Swint replied that the plat stated no access to Sandy Creek Road so he considered it as a side yard.

Mr. Bolton pointed out that the original plat submitted by the builder indicated a front-load garage; however, in the pictures Mr. Swint presented on the overhead screen, the garage appears to load from the Sandy Creek Road side of the house. He asked Mr. Swint why a foundation survey was not prepared.

Mr. Swint replied that it was an oversight.

Chairman Mahon asked Mr. Swint if the pictures could be kept by the County and Mr. Swint did not object.

Mr. Beckwith verified that Mr. Swint signed the form knowing a foundation survey was required prior to framing.

Mr. Swint replied affirmatively.

Mr. Blanks asked Mr. Swint if he was familiar with the County ordinance that states that if property fronts two (2) streets or three (3) streets that every street which borders the property is considered a front yard.

Mr. Swint replied that Mr. Frisina had advised him about the front yards; however, the conflict was when the plat indicated no access to Sandy Creek Road, so if there is no access how can it be a front. He added that this is where the confusion lies.

Mr. Bolton asked what governs if a road can be accessed or not.

Mr. Frisina explained that each lot has to access the lowest classified street and Sandy Creek Road is classified as a higher classification than Adams Road. He added that the Final Plat indicated both streets with a 75 foot setback.

Larry Blanks made a motion to approve the petition. Bill Beckwith seconded the motion.

Mr. Blanks said that in his opinion it is an illogical situation with multiple fronts to a piece of property. He stated that the lot consists of two (2) acres and the house is fairly centered. He commented that he did not feel bad in granting an eleven (11) foot variance because it is not dramatic. He added that in similar situations where two (2) streets were involved that the Z.B.A. has granted variances. He said that this was a builder's mistake, pure and simple. He commented that the variance could not be justified under the six (6) criteria points. He remarked that the granting of the variance was the right thing.

Chairman Mahon reported that he had been to the property and it is a beautiful house in a great location; however, he has a real problem with this. He stressed that everything was basically provided and the plat is marked clearly with a 75 foot building line and a document was signed acknowledging that he was to request a foundation survey before framing. He advised that the Z.B.A. has to apply the ordinances equally to everybody. He said that he thought this was a self-induced hardship and Mr. Swint had stated it was. He commented that he could not vote in favor of the petition. He said that nothing was hidden and it was a mistake. He explained that if the Z.B.A. allowed this it could set a precedent.

Mr. Bolton concurred with Chairman Mahon. He said you emotionally want to help but your hands are tied because the code is clear, the instructions on the building permit were clear, and the plat was clear. He stated that while it was a legitimate mistake, the Z.B.A. did not have the luxury of being able to approve a mistake to vary the Zoning Ordinance. He added that approval could set a

precedent.

Page 5
October 23, 2006

Mr. Beckwith concurred with Mr. Blanks that voting in favor of the petition would be the right thing to do but everything everyone else says also makes sense. He said he did not know what difference it would make in future years. He stated the Z.B.A. was a board of citizens in the County and they want to do something probably right even though it may not be completely in line with the ordinance. He added that everyone makes mistakes and some things have gotten past them without knowledge of what happened. He said that some people do not admit mistakes; however, Mr. Swint did admit his mistake and is asking for the Z.B.A. to look at this in a reasonable method and manner.

He commented that he tried to follow the ordinance as much as possible but wished the B.O.C. would do something about multiple frontage lots and maybe the Z.B.A. can proposed an ordinance to address a situation like this. He stressed that the Z.B.A. has a duty to do but also have to apply some compassion and reasonableness to the situation so he would vote in favor of the motion.

Mr. Blanks said that homeowners were being penalized because they front two (2) streets and call both streets front yards. He stated that it was illogical to have two (2) front yards. He said that 64 feet 7 inches is an adequate distance and eleven (11) feet is not going to change or impact dramatically anything to do with that particular piece of property or the neighborhood. He complies with all the other setbacks. He remarked it would have been fine had this been another property line instead of Sandy Creek Road. He stressed that he did not agree to two (2) fronts on a four (4) sided piece of property.

Mr. Bolton pointed out that the Z.B.A. had previously reviewed a property which had frontage on three (3) streets and it was impossible to meet the regulations; however, it was possible in this case. He said the challenge he had was establishing a situation where if for whatever convenience reason someone wanted to come in, in the future, and say there was a tree I wanted to keep or whatever so I moved my foundation, then anyone can say I made a mistake and it is alright. He commented that the ordinance may need to be revisited; however, that is a B.O.C. issue and not a Z.B.A. issue. He confirmed that the Z.B.A.'s job was to say here is what the law says and based on the six (6) criteria points can an exception be made. He added that emotionally it stings but does not meet the criteria in making an exception.

Chairman Mahon stated that this was an emotional issue for the Z.B.A. because they are homeowners as well; however, they took an oath. He said it was made as easy as possible to know what needs to be done.

Mr. Blanks said that Mr. Swint has been building homes here for eleven (11) years. He confirmed that he had checked with Planning & Zoning and Mr. Swint has never asked for a variance and he has built within the guidelines of the County ordinances. He stated that there are some builders in the County who do not do that. He remarked that he is forgiving a single mistake in an eleven (11) year career and it is not going out of the ordinary, especially when the property has two (2) fronts.

At this time, Chairman Mahon called for the vote. The vote for approval was 2-2 with Chairman Mahon and Vic Bolton voting in opposition. Due to the lack of three (3) affirmative votes, the motion was considered a denial.

Attorney McNally advised the Z.B.A. that a time period must be given to the applicant to correct the situation and the Z.B.A. may grant from ten (10) to a maximum of thirty (30) days to correct the situation.

Vic Bolton made a motion to allow thirty (30) days for Mr. Swint to bring the property into compliance. Larry Blanks seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

Chairman Mahon advised Mr. Swint and Mr. Payne that they would have thirty (30) days to bring the property into compliance. He added that should they have any further questions to contact Mr.

Frisina or his Staff for help.

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Page 6
October 23, 2006

Chairman Mahon asked if there was any further business.

Pete Frisina advised that due to the lack of applications, the November 27, 2006 Public Hearing would be cancelled.

Larry Blanks made a motion to request that the B.O.C. review the Zoning Ordinance in regards to the multiple frontage lot requirements and look at some better clarification so not to run into horrifying situations like tonight. Bill Beckwith seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

Chairman Mahon asked Mr. Frisina to draft a letter of expression of the Z.B.A.'s opinion.

Attorney Bill McNally requested an Executive Session to discuss a legal matter.

Bill Beckwith made a motion to hold Executive Session to discuss a legal matter as requested by Attorney McNally. Vic Bolton seconded the motion. The motion unanimously passed 4-0. Ron Mabra was absent.

Chairman Mahon adjourned the Public Hearing for Executive Session at 7:51 P.M. Executive Session was held by Attorney McNally, Pete Frisina, Chairman Mahon, Bill Beckwith, Vic Bolton, and Larry Blanks.

Attorney McNally advised the Z.B.A. on a legal matter; however, no action was taken.

Chairman Mahon reconvened the Public Hearing at 8:14 P.M.

There being no further business, Vic Bolton made the motion to adjourn the meeting. Larry Blanks seconded the motion. The motion unanimously passed 4-0. The meeting adjourned at 8:14 P.M.

ZONING BOARD OF APPEALS
OF
FAYETTE COUNTY

Respectfully submitted by:

TOM MAHON
CHAIRMAN

ROBYN S. WILSON
SECRETARY