

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

DECEMBER 21, 2004

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Robert Sharpe, Chairman
Jimmy Watford
Steven Day
Michael Lee
Charles Stewart**

MEMBERS ABSENT:

Davis Cohen (Excused)

TECHNICAL STAFF PRESENT:

**Gregori Anderson, Chatham County
Inspections Department**

MPC STAFF PRESENT:

**John Howell, Secretary
Jim Hansen, Secretary
Christy Adams, Assistant Secretary**

RE: Called to Order

Mr. Sharpe called the December 21, 2004 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Continued Petition of Fred Buck, For
John Hendrix
B-04-33291-1
102 Samuel Lyon Way**

Present for the petition was Mr. Charles Gatch, Attorney.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a 25 foot front yard setback variance which must be approved by the Board of Appeals pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct a single family residence within a PUD-R (Planned Unit Development-Residential) district.

Background

At the November 23, 2004 Board of Appeals meeting, this item was continued to the December 21st meeting. The Board directed the petitioner to meet with neighbors and the master developer of South Harbor in an effort to reach agreement on how the variance might be ameliorated. Staff did not participate in the meeting(s) and cannot comment on what agreements may or may not have been reached.

Findings

1. Section 4-6.1 requires a minimum 55 foot front yard setback from the centerline of a minor street. Samuel Lyon Way is built upon a 40 foot right-of-way. The petitioner is requesting a 25 foot front yard setback variance to accommodate a single family dwelling that is presently under construction.
2. The front yard setback line is established from the centerline of the right-of-way. The right-of-way was established and approved through the subdivision process and contains a “bump-out” adjoining the subject property. The setback line must conform to the center line of the right-of-way.
3. The subject property is approximately 21,694 square feet in size and is trapezoidal in shape. The narrowest side adjoins the street. The lot measures approximately 170 feet in depth and 160 feet across the rear. As proposed, the new residence would have a 15 foot front yard setback and a 42 foot rear yard setback. The side yard setbacks would be 10 and 34 feet.
4. The Zoning Board of Appeals may authorize a variance in an individual case upon a finding that:

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

The lot is irregular in shape. There are no irregular topographic features and the lot is nearly one half acre in size.

- (b) **The application of this chapter to this particular piece of property would create an unnecessary hardship.**

Application of the setback requirements would not create an unnecessary hardship. Petitioner’s property is of sufficient size to accommodate the proposed structure without a front yard setback variance.

- (c) **Such conditions are peculiar to the particular piece of property involved.**

There are no unusual or peculiar conditions related to the property.

- (d) **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Chatham County Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good.

Summary of Findings

All of the conditions required for granting a 25 foot front yard setback variance appear not to be met.

Mr. Anderson (Director, Building Safety for Chatham County) stated he knew Mr. Buck real well and has worked with him for years in the community. He said from the issuance of permitting for this particular dwelling they identified that there were some irregularities on the property. Because of that they thought they were making some acknowledgement of that in the issuance of the permit. He said two things that they did in the beginning of the process was (1) as part of the issuance of the permit it states on the permit that the contractor would have the responsibility of determining where the property lines were and (2) to make sure that the lay out of the structure did not encroach into the right-of-way. He said staff did acknowledge that the lay out of the street was not actually done the way it was designed. Therefore, it was difficult to determine from staff's standpoint as part of the inspection where the lines ended up because they were not where they were supposed to be as part of the plat. He said they required and acknowledged through Mr. Buck that during his lay out that he was to verify where those lines were and make sure there was no encroachment, which was stated on the permit. He further stated that as part of an additional acknowledgement on the front of the permit file Mr. Buck's signature of the need to verify where the location of the lot lines were and to make sure he was not encroaching. He said staff issued a permit and went out to inspect the site with the understanding that the responsibility of making sure that the encroachment was not there was on the contractor.

Mr. Day asked if it was difficult for staff to determine where the lot lines were at the time of inspection for the footings and the foundation? Why didn't the inspection department require Mr. Buck to have that laid out so that they could determine that whenever they did inspect for footings and foundation?

Mr. Anderson stated he did not know the answer to that.

Mr. Day stated from where he was sitting, it sounded to him like Mr. Buck failed in what he was supposed to do and staff failed in what they were supposed to do. He said he felt both parties were at fault because it should have been the responsibility of Mr. Buck to determine where the setback lines were and place his house accordingly, but it also should have been the responsibility of the inspector to verify since it was on the permit that in fact that had happened.

Mr. Sharpe asked if the road was a county road?

Mr. Hansen stated that he believed it was. He said the developer who placed the road there was responsible for the construction of the road, and he believed the County will maintain it.

Mr. Anderson stated it is a gated community and a lot of times it was deeded to the developer and was not a County right-of-way. He said if the question is on the road and right-of-way, if it is a privately owned road and not a dedicated right-of-way that the County maintained then it was an issue between the developer and builder.

Mr. Charles Gatch, Attorney, stated he was representing Mr. Buck and the owner of the property, Mr. Hendrix. He said they met with Dr. Johnson and his attorney and Steve Lufburrow, Developer. He said they worked out a plan so that Dr. Johnson's driveway would not encroach upon Mr. Hendrix's driveway when it comes to a point narrowing out in the cul-de-sac area. He what they have been able to work out was that they would put pavers in extending another 17½ feet all the way around the cul-de-sac. The developer has agreed to pay \$2,400 towards placement of the pavers in that area, and each of the landowners, Dr. Johnson and Mr. Hendrix has agreed to pay the remainder. He said the cost will be approximately \$5,000. He

said that will give a setback from the actual asphalt of the area of another 17½ feet and it would give Dr. Johnson sufficient frontage coming out for his driveway to extend without encroaching on Mr. Hendrix's. This would give about 10 feet distance between their driveways when it reached the paving area. He said he sent a letter to Dr. Johnson yesterday verifying the content of this and was awaiting his signature.

Mr. Stewart stated he was hesitant to move forward without Dr. Johnson being present because he was directly involved. He said if he (Dr. Johnson) was not here to attest to it, he did not see how the Board could move forward.

Mr. Lee stated he felt Dr. Johnson had an opportunity to be here and if he was objecting to this then he would think that he would have been here.

Mr. Gatch stated if he understood correctly, he did not feel Dr. Johnson was objecting to the variance. He said what Dr. Johnson was objecting to was the fact that his property was on the cul-de-sac area and the pavement was so far that if he extended his driveway from his property all the way to the asphalt it would come to a point of convergence. He said that was what he was objecting to and not granting of the variance to Mr. Hendrix.

CZBA Action: Mr. Lee made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based on that the relief would not cause substantial detriment to the public good. Mr. Day seconded the motion and it was passed 2 – 1. Abstaining to the motion was Mr. Stewart.

**RE: Petition of Tidal Construction, Co.
J.A. Register
B-04-56417-1
116 Pinnacle Court**

Present for the petition was Scott Vaughan, Attorney for Tidal Construction.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a rear yard setback variance of 5 feet 5 inches pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct a single family residence within a PUD-C (Planned Unit Development –Community) district.

Findings

1. Section 4-6.1 requires a minimum 25 foot rear yard setback for residential use within the PUD-C district.
2. The subject parcel is currently vacant. Construction of a single family residential structure is proposed. The petitioner is seeking a variance that would allow construction of a screened porch to encroach 5 feet 5 inches into the required rear yard setback.
3. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety

and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject property is approximately .20 acres (8,914 square feet) in size. Though trapezoidal in shape (80 foot frontage, with sides of 109 and 125 feet and 105 foot rear), the lot is otherwise standard and it contains no irregular topographic features.

- b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Application of the regulations of the Zoning Ordinance would not create an unnecessary hardship.

- c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described in a. (above) are not peculiar to the subject property.

- d. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Chatham County Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good. The rear property line abuts a golf course which also contains a 20 foot landscape easement.

Summary of Findings

All the conditions required for granting a 5 foot 5 inch rear yard setback variance appear not to be met.

Mr. Scott Vaughan, Attorney, stated Mr. McCullough has a father-in-law who is 93 years old who love the outdoors. The screened porch was predominantly for his father-in-law who recently broke his hip. Mr. McCullough’s wife is a nurse and is in Florida with him. He said the McCullough’s anticipate what is the natural progression and felt this would give the father an opportunity to best enjoy moving in with them. He said Tidal Construction owned the property on either side and they have gotten approval from them, as well as they have received approval from Coast Line who was across the street.

Mr. Lee asked if there was anyone present in opposition to the petition.

No one came forward.

CZBA Action: Mr. Lee made a motion that the Chatham County Zoning Board of Appeals **approve** the petition as submitted based on that the relief granted would not cause substantial detriment to the public good.

Mr. Day asked if the petitioner was set on this design?

Mr. Vaughan stated it was the smallest of the homes that would be suitable that they found because the lot was not very big.

Mr. Day stated the only question he had was the contention was the overall depth of the house in relationship to if you looked at the garage and porch. He asked if they would consider taking the garage and putting it over on the side of the house and move the house sideways. He said it appeared to him that there was plenty of side yard setback.

Mr. McCullough stated the problem he felt would be was that the lot really did not have as much space over here as it appeared. He said he did not think what he was suggesting was ever considered and he would have to get redraws for new plans.

Mr. Lee stated it also would not give him access from the garage into the house without going through part of the living area.

CZBA Action: Mr. Stewart seconded the motion and it was unanimously passed.

Mr. Day stated to the petitioner to make sure his builder hits the front line and does not come back to the Board asking for forgiveness on the front line.

Mr. McCullough stated he is in closer contact with his builder since this problem.

**RE: Petition of Walter Blount, For
Heyward Perry
B-04-56763-1
107 St. Ives Way**

Mr. Hansen gave the following Staff report.

The petitioner is requesting a rear yard setback variance of 8.83 feet pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct a room addition onto an existing single family residence located within a P-I-P (Planned Institutional Professional) zoning district.

Findings

1. Section 4-6.1 requires a minimum 25 foot rear yard setback for residential uses within the P-I-P zoning district.
2. The petitioner is requesting an 8.83 foot rear yard setback variance to accommodate construction of a room addition onto the rear of an existing house. The proposed addition measures approximately 18 by 20 feet in size. If the addition is constructed as proposed, the residence would occupy a total of 1,672 square feet of the 13,068 square foot lot (12.8 percent lot coverage).
3. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in

unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The property in question is an odd shaped parcel having a curvilinear frontage along St. Ives Way. The interior side property line measures 120.74 feet in length whereas the street side side property line measures less than 40 feet in length. The property measures approximately 208 feet across the rear. The existing structure has been sited at the widest portion of the “wedge” to afford the maximum building envelope. The proposed addition would, at its closest point encroach 8.83 feet into the required rear yard setback. Because of the shape of the lot, the required 25 foot setback would be achieved within seven feet of the edge of the addition.

- b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Because the parcel in question is oddly shaped, strict application of the development standards of the Zoning Ordinance would create an unnecessary hardship.

- c. **Such conditions are peculiar to the particular piece of property involved.**

The oddly shaped parcel is a condition that is peculiar to the particular piece of property involved.

- d. **Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Chatham County Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good. A 65 foot County owned canal right-of-way abuts the rear of the property.

Summary of Findings

All the conditions required for granting an 8.83 foot rear yard setback variance appear to be met.

Mr. Sharpe asked if there was anyone present in opposition to the petition.

No one came forward.

CZBA Action: Mr. Lee made a motion that the Chatham County Zoning Board of Appeals **approve** the petition as submitted based on the finding that the conditions for granting the variance have been met. Mr. Watford seconded the motion and it was unanimously passed.

**RE: Petition of Dawson Wissmach Architects
Neil Dawson
B-04-56986-1
187 Penrose Drive**

Mr. Day recused himself from this petition.

Present for the petition was Neil Dawson.

Mr. Hansen gave the following Staff report.

The petitioner is requesting the following variances in order to construct a single family residence within an R-1-A, EO (One Family Residential, Environmental Overlay) zoning district: 1) a 17 foot reduction of the 50 foot marsh setback required by Section 4-12 of the Chatham County Zoning Ordinance; and 2) a two foot reduction of the 35 foot riparian setback required by Section 4-12 of the Chatham County Zoning Ordinance.

Findings

1. The subject property, located at 187 Penrose Drive, lies within the Environmental Overlay (EO) district. The Islands Community, as defined by the overlay includes those areas of unincorporated Chatham County lying east of the Wilmington River, south of St. Augustine Creek, and west of the Bull River. In addition to the development standards of the R-1-A district, the EO imposes environmental standards including a requirement for a minimum riparian buffer of 35 feet and a minimum marsh setback of 50 feet.
2. The subject parcel contains 2.83 acres. However, because of its marsh front location, slightly less than 30,000 square feet of the property is buildable. An existing house is presently located on the site. It is the intent of the petitioner to construct a new dwelling and to remove the existing structure upon completion.
3. Marsh and riparian setbacks are not necessarily measured from property lines, but rather from the marsh limit as established by the Department of Natural Resources. Accordingly, the subject property has approximately 45 feet of usable width at the widest point of the 50 foot marsh setback line.
4. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:
 - a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

There are no extraordinary or exceptional conditions that relate to this property because of its size, shape, or topography. Although a majority of the parcel is

identified as marsh land, this is not a condition that would necessitate granting of variances to allow the property to be developed.

- b. The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Although the identified marsh land covers a great portion of the parcel and thus the setback extends accordingly, strict enforcement of the development standards would not render the site unbuildable and create an unnecessary hardship.

- c. Such conditions are peculiar to the particular piece of property involved.**

The conditions described in 2. (above) are peculiar to this particular piece of property.

- d. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Chatham County Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good. The new structure to be constructed will have less encroachment than the existing structure and the house has been sited to preserve the maximum amount of existing vegetation.

Summary of Findings

All of the conditions necessary for granting a 17 foot variance for the required 50 foot marsh setback and a two foot variance for the required 35 foot riparian setback appear not to be net.

Mr. Dawson stated as the Board could see there was a line further out from when he initially had the property surveyed that indicated where the marsh line was. He said that was where the vegetation changed from the standard yard grass to marsh grass. He said he designed the house that would not require any variances and did not depend on any of the existing Live oak trees based on the surveyors information. When he later called for DNR to come and verify those marsh lines they moved this line in about 17 feet and hence the requirement for the variance on particularly this little portion that stuck out. He said if you took 50 feet from where he surveyed the marsh line as being he would be in good shape, but with DNR's modification to the setback line that was where he got into an issue.

He further stated that he felt the intent of the overlay district with the 50 foot setback was your standard marsh front lot typically has a very small rear portion that faced the marsh. He said it was consistent in this neighborhood that from the marsh line going from here forward up Richardson Creek, 50 feet was a rightful setback from the marsh line. However, this lot was unusual in that the marsh comes way down to the side. Hence, he felt that the side marsh setback should be treated differently than the rear marsh setback.

Mr. Stewart asked if he said that his grass comes down to that point and turns to marsh?

Mr. Dawson stated yes, and for whatever reason when DNR flagged it they basically tied the blue tape onto the palm tree.

Mr. Lee asked if the DNR line passed thru some tree coverage where trees were growing?

Mr. Dawson stated yes, and according to DNR there was a 24 inch Live oak growing in the marsh.

Mr. Sharpe asked if there was anyone present in opposition to the petition.

Ms. Mary Ann Heimes stated she was not in opposition. She said she was curious because she was involved pretty heavy with the Islands Land Use Plan. She said she would disagree that the side marsh would make a difference, and felt it would set a precedent and did not think it could be done in this forum. She said she felt that the fact DNR set a different marsh line would be confusing. She said she also felt that the 50 foot marsh setback needed to be maintained as it had been written into the law. Again, she was not in opposition to the petition but wanted to remind the Board that that law was in effect.

Mr. Lee asked Staff if the house was not there and this was a vacant lot the petitioner would not be in violation of anything?

Mr. Hansen stated that was correct.

CZBA Action: **Mr. Lee** made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based on the finding that the relief granted would not cause substantial detriment to the public good. **Mr. Watford** seconded the motion and it was passed. Abstaining to the motion was **Mr. Day**.

RE: Minutes

1. Approval of CZBA Minutes – November 23, 2004

CZBA Action: **Mr. Stewart** made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of November 23, 2004 as submitted. **Mr. Day** seconded the motion and it was passed.

RE: Other Business

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 9:40 a.m.

Respectfully submitted,

John Howell,
Secretary

JH:ca