

**CHATHAM COUNTY ZONING BOARD OF APPEALS**

**ARTHUR A. MENDONSA HEARING ROOM**

**112 EAST STATE STREET**

**January 27, 2004**

**9:00 A.M.**

**MINUTES**

**MEMBERS PRESENT:**

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

**TECHNICAL STAFF PRESENT:**

**Dan Jensen, Chatham County Inspections  
Department**

**MPC STAFF PRESENT:**

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

**RE: Called to Order**

Mr. Watford called the January 27, 2004 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Petition of Radu Gavrilas  
B-04-40711-1  
1004 Walthour Road**

Present for the petition was Radu Gavrilas.

Mr. Watford called for the Staff report.

Mr. Howell gave the following Staff report:

The petitioner is requesting a variance to allow construction of a residence that would encroach six feet into the required front yard setback area. The subject property is located at 902 Mims Street and is within an R-1 (One-Family Residential) zoning district.

**Findings**

1. Section 4-6.1 of the Chatham County Zoning Ordinance provides that within an R-1 zoning district, for dwellings served by public water supply and individual waste disposal systems the minimum lot width is 75 feet, the minimum lot size is 15,000 square feet, and the front yard building setback is a minimum of 55 feet from the centerline of a residential street but not closer than 25 feet from the front yard property line.

2. The petitioner's lot is irregular in shape. The property is 55 to 91 feet wide X 90 to 97 feet deep and contains approximately 6,600 square feet. The petitioner's property was formed by combining lots – Lots 50 and 51. The resultant lot is substandard in area and width. Section 5-4.3, Tract of Land Not Meeting Minimum Lot Size Requirements, provides that any lot of record may be used for a building site for a single-family residence, provided that if the lot is not served by public water and sewer the application for a building permit to construct a dwelling shall be approved by the Chatham County Health Department. The recombination of Lots 50 and 51 has been approved by the Chatham County Health Department.
3. The petitioner proposes to build a 1,400 square foot house on a corner lot. The house will face Mims Street and the side yard will be along Walthour Road. The proposed house will be 19 feet from the front yard property line along Mims Street and will encroach six feet into the required front yard building setback area.
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 substandard in area and width and is irregular in shape. This is an extraordinary and exceptional condition.
  - (b) The application of this chapter to this particular piece of property would create an unnecessary hardship.

The petitioner proposes to build a 1,400 square foot house. The side and rear yard minimum setback requirements will be met. The application of the development standards to this particular piece of property would create a hardship in the development of the property.
  - (c) Such conditions are peculiar to the particular piece of property involved.

The lot is substandard in area and width and these conditions are 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.

**Summary of Findings**

All of the conditions required for granting a six-foot front yard setback variance appear to be met.

**Mr. Sharpe** apologized to the Board for being late.

**Mr. Day** asked if there was a requirement for a side yard setback?

**Mr. Howell** stated yes.

**Mr. Sharpe** stated he lives on Mims Street and had some interest in this matter. He said if the Board or anyone present felt that he would not be able to rule fairly or that it was a conflict of interest, he would recuse himself from making any kinds of comments. However, he would like to reserve the right to ask questions.

**Mr. Howell** stated his concern was if this was the front of the house, the rear yard of the house is required to be 25 feet from the property line, but that was not what was sent over with the application. So, that was why he needed to clarify exactly where the front of the house was. He said that was when he was told that this was the front.

**Mr. Day** stated his concern was the side yard setback.

**Mr. Howell** stated the side yard setback was 7 feet and it was met.

**Mr. Jensen** stated if the front of the house was on Mims Street then the other side was really a side yard setback. He said if you read Section 3.9, corner lots, you could cut the requirement of the setback in half to 12½'. According to Section 3.9 the petitioner does not need a variance if the house faces Mims Street.

**Mr. Howell** stated he needed a setback from 25' from the property line. But from the way the house was shown it was not 25'.

**Mr. Jensen** stated it was really a 6' front yard setback from Mims Street. He stated that the drawing really did not represent what the petitioner was asking for.

**Mr. Howell** stated that the drawing represented the location of the house on the lot.

**Mr. Cohen** stated that the side yard setback from Walthour was okay. He said it was the front setback from Mims Street that they Board was concerned about.

**Mr. Howell** stated yes.

**Mr. Cohen** asked how many feet of encroachment are they talking about?

**Mr. Howell** stated that it less than six.

**Mr. Jensen** stated if the scale was correct it appeared to be 1½ foot.

**Mr. Day** stated if they are talking about a 1½-foot setback, why not ask the petitioner to move his house back 1½ feet.

**Mr. Howell** stated because the rear yard distance is 25' and it was exactly 25'. If you moved the house back, you would be encroaching into the rear yard setback. He said as they saw on yesterday there is a house being built over here.

**Mr. Day** asked who owned the house over there?

**Mr. Howell** stated he did not know. He said the house was not under construction, but they were doing footings and the batter boards were up.

**Mr. Lee** asked where it was written “R/W” the line that was there if that was the property line of the lot?

**Mr. Howell** stated yes.

**Mr. Lee** asked what was the line that says Mims Street. He further asked if that was the centerline of Mims Street?

**Mr. Howell** stated that it was depicted as the centerline of Mims Streets, but this was not an actual survey.

**Mr. Lee** stated that the Board is making a decision based on a drawing that may not be correct.

**Mr. Cohen** stated no matter who did the drawing; the issue would still be 1 foot – 1½-foot encroachment on the front yard setback.

**Mr. Jensen** asked Mr. Howell how wide was Mims Street right-of-way?

**Mr. Howell** stated the survey showed it as 40 feet.

**Mr. Jensen** stated this has an individual septic tank and public water, so it would be a minor collector according to the Ordinance. He said the setback on that street was 55 feet from the centerline.

**Mr. Howell** added no closer than 25 feet from the property line.

**Mr. Jensen** stated so it would be approximately 1 foot – 1½ foot that he would need.

**Mr. Howell** stated yes.

**Mr. Stewart** stated the Board could deny the front yard setback and approve the rear yard setback for 1½ foot.

**Mr. Sharpe** stated the 67½ feet from Walthour Road to the dashed line going across that one corner of the property was the right-of-way from Walthour Road.

**Mr. Jensen** stated no. He said if the house faced Walthour Road that would have been the required setback. He added that the house was not encroaching on Walthour.

**CZBA Action:** **Mr. Stewart made a motion to deny the front yard setback and approve the rear yard setback 1 foot – 1½ foot or a number to be determined but less than 6 feet.**

**Mr. Sharpe** asked with the Islands Land Use Plan and the traffic count on Walthour Road being 1,900 vehicles per day, if anything was done towards Walthour would that impact Walthour Road?

**Mr. Jensen** stated no, not if the house faces Mims Street.

**Mr. Gavrilas** stated he was confused about the setbacks, so he tried to get the best knowledge that he could. He said the idea would be a better position for the house to face Walthour Road. But because of the shape of the lot he was trying not to encroach so much into the County right-of-way. He said he was aware of the fact that the right-of-way from the center of the road from Walthour to the right-of-way mark was supposed to be 67.5 feet. This being the number, facing the house towards Walthour the driveway would encroach a very large amount. Also, he would not have the 25 feet for the rear yard position. He said he could have put the house into an angle to create a backyard at an angle with a corner lot, but it would not have been a great position to have the house. He said he discussed with the County and found the best position was to have face Mims Street. However, facing Mims Street he was not aware that he still had to have 67.5. He said from the center of Walthour Road it was 67.5 feet. When the petition was presented it was a lot of woods and briars, so what it showed in the field was much less than 6 feet. He said at the most it was approximately  $2\frac{3}{4}$  feet. He said he could move the house back about a 1 foot –  $1\frac{1}{2}$  foot and because of the angle of the lot that would not present an encroachment.

**Mr. Day** asked Mr. Jensen what were the setback requirements on the side yard setback on Walthour?

**Mr. Jensen** stated  $12\frac{1}{2}$  feet.

**Mr. Day** stated although he was within the guidelines of the County, he felt the house was pushed too far towards the neighbors' house and not Walthour Road. He asked if it was possible for him to bring the house out towards Walthour Road a little bit and then back 1 foot –  $1\frac{1}{2}$  foot, so that he gets away from the neighbors' property just a little bit. He said the reason he suggested this was because he was concerned about fire and accessibility for emergency people and things like that.

**Mr. Gavrilas** stated that was not a problem. He said if he set the house back 1 foot –  $1\frac{1}{2}$  foot it would completely miss the 67.5.

**Mr. Day** stated the 67.5 does not come into play in this particular situation because it was a side yard setback and not a front yard setback.

**Mr. Gavrilas** stated that was not a problem.

**CZBA Action: Mr. Lee seconded the motion.**

**Mr. Howell** stated if the petitioner moved the house back to meet the front, he would be encroaching into the rear.

**Ms. Rebecca Bolt (Neighbor)** asked where would the petitioner put the septic tank?

**Mr. Howell** stated that determination would be made by the County Health Department.

**Mr. Jensen** added the setbacks would not come into play. He said only the structure would be involved. He said the septic tank would be on the property period.

**Mr. Cohen** called for the vote.

Mr. Watford stated before he retired he worked with Mr. Gavrilas periodically. He said if the Board was concerned about him voting on the petition then he could abstain from the vote.

Mr. Cohen asked if he felt that he had a conflict of interest?

Mr. Watford stated no.

Mr. Cohen asked if he was currently working with him on anything?

**CZBA Action: The motion was unanimously passed.**

**RE: Petition of Chris M. & Deborah L. Lain  
B-04-41450-1  
8 Welch Street**

Present for the petition was Chris Lain.

Mr. Sharpe called for the Staff report.

Mr. Howell gave the following Staff report.

The petitioners are requesting a variance to allow construction of a residence that would encroach 10 feet into the required front yard setback area. The subject property is located at 8 Welch Street and is within an R-1-A (One-Family Residential) zoning district.

**Findings**

1. Section 4-6.1 of the Chatham County Zoning Ordinance provides that within an R-1-A zoning district, for dwellings served by public water supply and individual waste disposal systems the minimum lot width is 75 feet, the minimum lot size is 15,000 square feet, and the front yard building setback is a minimum of 55 feet from the centerline of a standard residential street but not closer than 25 feet from the front property line if the street right-of-way is substandard. The property fronts Welch Street, a 50-foot right-of-way
2. The petitioner's property is 157.5 feet wide X 100 feet deep and contains approximately 15,750 square feet. The lot is not substandard in area or width.
3. The petitioner proposes to build a 2,661 square foot house (heated area) that will be 15 feet from the front yard property line. The proposed house will encroach ten feet into the 25-foot minimum requirement for a front yard-building setback.
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 not substandard in area or width. The property is rectangular in shape.

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

The petitioner proposes to build a 2,661 square foot house. The application of the development standards to this particular piece of property would not create a hardship in the development of the property.

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

The lot is not substandard in area or width.

- (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 impair the purposes and intent of the Chatham County Zoning Ordinance.

### **Summary of Findings**

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

**Mr. Day** stated if you have a 100 foot lot and you have a 25 foot front yard and rear yard setbacks plus a 58 foot house that was 108 feet. He asked how far the steps came out on the front of the house?

**Mr. Jensen** stated any structure that was not covered could encroach into the setback. He said he did not think the steps were covered.

**Mr. Howell** added the proposed house would be 15 feet from the front property line.

**Mr. Cohen** asked Staff if there was any other way to reposition the house to bring it into compliance?

**Mr. Howell** stated you were allowed to put a 50-foot deep house on this lot without encroaching onto the front or rear yard setbacks.

**Mr. Lain** stated when they initially made application; they were told they had to be back 30 feet from the property line. However, he has learned they only have to be back 25 feet. He said that was why they asked for a variance of 20 feet. He said on the house plans, they intended to move the garage forward to be even with the rest of the house, approximately 4 feet. He said they could not redesign the house because of the pitch to eliminate the 3.8 feet. He said they felt the house would complement the neighborhood. He said they could center the house on the lot, where you would have a 23-foot distance in the front and back.

**Mr. Day** asked if the staircase was covered?

**Mr. Lain** stated yes.

**Mr. Stewart** asked if the back porch was covered?

Mr. Lain stated yes.

Mr. Stewart asked how much was he asking for the front yard setback?

Mr. Lain stated originally they asked for 20 feet. He said they asked for a 10-foot variance because they set the house back to 30 feet. Now, they were requesting a 5-foot variance from the front in that way he would have room for error.

Mr. Stewart stated according to his calculation that would leave a rear yard of 26.4.

Mr. Jensen stated he asked for a 5-foot variance so he has room for error, but he would have the 26 feet. He said he really only needed if he got it perfect 3.8 foot rear yard or front yard setback. Or, the petitioner said he could split it down the middle.

Mr. Stewart stated he would feel better with him splitting it down the middle.

Mr. Day stated he was concerned that at some point in time if they ever do roads out there, what would they do in that kind of situation.

Mr. Watford stated the right-of-way was there now.

Mr. Howell stated he felt if they paved the street and put it down the middle of the street the pavement probably would be no more than 30 feet wide for two-way traffic. He said like Mr. Stewart said if you give a 2½-foot front and 2½ foot rear setback variances that would center the house on the lot. And as he stated before the side yard setbacks were beyond the minimum required.

Mr. Cohen asked the petitioner if they were willing to reposition the house so as to create a front 2½-foot variance and a rear 2½-foot variance?

Mr. Lain stated yes.

**CZBA Action:** Mr. Cohen made a motion to approve the petition with the understanding the house will be centered on the lot providing a 2½-foot front yard variance and a 2½-foot rear yard variance. Mr. Day seconded the motion and it was unanimously passed.

**RE: Minutes**

1. Approval of CZBA Minutes – November 25, 2003

**CZBA Action:** Mr. Day made a motion to approve the regular meeting minutes of November 25, 2003. Mr. Cohen seconded the motion and it passed unanimously.

**RE: Other Business**

Mr. Jensen stated that the student zoning inspectors are becoming more proactive and he would like to introduce them to the Board. The students are Vendetta Harvey and Kirk Van Hammond.

Mr. Jensen stated that he got married on January 2, 2004 and that he would be leaving the County on February 6 as he is moving to Austin, Texas.



**Mr. Lee** stated that he has a concern with the special meeting. After he received his package, he was curious as to why the Board was having a special meeting for this petition.

**Mr. Sharpe** stated that he received a call from a Mr. Allan Mock one evening asking if Mr. Murray had called and talked to him yet about a zoning petition. He stated that he did not want to be associated with something that was politically motivated had not heard from Mr. Murray and did not intend to contact Mr. Murray or Chairman Hair as he thought it to be somewhat unethical to get involved in something that could be a political football. Mr. Mock told him that he wanted a 900 square foot addition to an existing garage. He stated that he told Mr. Mock if he wanted a special meeting that he needed to contact Mr. John Howell at the MPC to set the plan in motion. He stated that once he heard from Mr. Howell he would make the determination as to whether or not the Board could grant a special meeting or not. Mr. Mock stated that he had a building permit that had been sitting at the Building Inspector's Office for four to six weeks and he was trying to get his building permit moved along. If he had to wait until the February 24 regularly scheduled meeting, it would put him out another month for his building permit and he wanted to go ahead and get started.

**Mr. Sharpe** further stated that when he found out that the petition was politically generated he figured the best thing to do would be to go ahead and have the special meeting. This would allow an opportunity to get the facts out in the open and let everyone concerned be copied with the information that was provided by Mr. Howell. He stated that the information was not the same as presented over the telephone by Mr. Mock. He does not want any precedence set where there is a political appointee doing the bidding of someone who has appointed him or her. He further stated that he wanted to avoid all appearance of wrongdoing. He figured the best thing to do would be to give Mr. Mock the special meeting. Mr. Sharpe further stated that upon visiting the site, it was determined that the structure doesn't meet any zoning at all.

**Mr. Lee** stated that his concern was that the only special meeting he recalled was actually a continuation of a regular meeting when they were considering the Kroger Building at Marshpoint. He stated that he is not questioning the decision or the reasoning behind it, but it does set precedence. If somebody feels like they cannot wait another two weeks for the regular meeting they can call a county commissioner or a member of the Board and expect a special meeting. Mr. Lee stated that when he got the package he saw that Alan Mock was the contractor and he is also the contractor on a current job for his wife. He stated that he would not be in the meeting in any case, but it did concern him that they were calling a special meeting.

**Mr. Stewart** stated that he is not available for the special meeting as his wife has an appointment that he needs to attend. Mr. Stewart further stated that he agrees that special meetings should not be permitted.

**Mr. Cohen** stated that he told Staff that if the chairman decides that a special meeting is an absolute must, then he would honor the chairman's decision. He further stated that in the very minimum there needs to be a point of criteria that dictates the only time a special meeting will be called. He further stated that petitioners need to know this upfront. They don't make decisions based on the dollar value of a piece of property or the financial impact of a property, but based on what they feel is the right thing to do in relationship to the neighborhood in conjunction with the County zoning laws. There should be a real tough test for someone to get the board into a special meeting, unless it is something that is continued. To bring the Board into a special

session because someone doesn't want to wait is not the right thing to do. Mr. Cohen stated if they don't meet the criteria, there should not be a special meeting.

**Mr. Jensen** stated that the plans came in showing the site as a garage and a full apartment upstairs, which is a second dwelling. He stated that they did not turn it down because it was in the front yard; the application was turned down because it was a second dwelling. Mr. Jensen stated the resubmitted plans, were essentially the same plans minus the bathroom. He stated that the petitioner was told that the proposal is in the front yard and is over 900 square feet, which would require Board of Appeals approval. The petitioner then stated that they had been held up by the Inspections Department and could wait no longer and therefore needed a special meeting. Mr. Jensen stated that one of the reasons he is staying another week is to see what goes on at the special meeting.

**Mr. Day** stated that this is a perfect meeting to nip this thing in the bud. From the facts as he sees it right now, there are some real questions in his mind. It should be put on the record that they are holding the special meeting as a courtesy and from this point forward there will be no special meetings unless the petition meets certain criteria.

**Mr. Howell** stated that he is also secretary to the City Board of Appeals and was ironically called to do a special meeting for the City as well. This particular petition involved a hardship case.

**RE: Adjournment**

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 9:50 a.m.

Respectfully submitted,

John Howell,  
Secretary

JH:ca