

CHATHAM COUNTY ZONING BOARD OF APPEALS

**ARTHUR A. MENDONSA HEARING ROOM
112 EAST STATE STREET**

FEBRUARY 04, 2004

11:00 A.M.

SPECIAL MEETING

MINUTES

MEMBERS PRESENT:

**Robert Sharpe, Chairman
Jimmy Watford, Vice Chairman
Davis Cohen
Steven Day**

MEMBERS ABSENT:

**Michael Lee
Charles Stewart**

TECHNICAL STAFF PRESENT:

Dan Jensen, City Inspections Department

MPC STAFF PRESENT:

John Howell, Secretary

RE: Call to Order

Mr. Sharpe called the February 04, 2004 special meeting of the County Zoning Board of Appeals to order at 11:00 a.m.

RE: Regular Agenda

**RE: Petition of Alan V. Mock, &
Marie O'Donovan
B-04-33516-1
1020 Wilmington Island Road**

Present for the petition was Jack Eades.

Mr. Sharpe called for the Staff report.

Mr. Howell gave the following Staff report.

The petitioner is requesting variances from the requirements of the Zoning Ordinance that accessory buildings be one story in height, a maximum of 900 square feet in area, and a minimum of ten feet from the property line pursuant to the requirements of Section 3-6.1 of the Chatham County Zoning Ordinance in order to build a 2,928 square foot, two-story garage and storage area at 1020 Wilmington Island Road, within an R-1-A (One- Family Residential) zoning district.

Findings

1. In 1991, the Chatham County Commissioners requested a study of allowing accessory structures in the front yard of unusually long, narrow lots. The study concluded that

eliminating the prohibition of accessory buildings in the front yard of all lots could result in construction of barns and sheds that would more appropriately be located in the rear of the principal residence. Construction of accessory buildings in the front yard can be detrimental to surrounding properties. However, the County Commissioners did institute a change to the Zoning Ordinance to allow accessory structures within the front yards of residential lots that abut saltwater marsh or rivers.

2. Section 3-6.1, Location of Accessory Buildings on Residential Lots, provides that accessory structures on properties directly abutting rivers or saltwater marshes shall not be restricted to rear yards, if the structures are set back a minimum of ten feet from the property line and do not exceed 900 square feet in size and one story in height.
3. The petitioner's property has frontage on the Wilmington River. The lot is approximately 950 feet deep and 110 feet wide, containing 104,500 square feet. The petitioner is requesting to build an accessory building (garage/storage) in the front yard of the property. The proposed building will be five feet from the side yard property line and two stories in height and will contain 2,928 square feet.
4. The petitioner's lot is sufficient in size and width to accommodate an accessory structure ten feet from the property line. There is no justification to build a structure five feet from the property lines, which is a 50 percent variance from the minimum requirements.
5. The submitted drawing depicts a two-story building designed for three cars, plus approximately 2,100 square feet of additional rooms for storage. A 900 square foot, or 30 X 30 foot structure, can accommodate three cars with storage. The petitioner is requesting a structure that is in excess of three times the square footage allowed. There is no apparent justification for a variance of 225 percent for the size of the structure requested. $[2,928 \text{ less } 900 = 2,028 / 900 = 2.25]$.
6. The one story height limit for front yard accessory structures is intended to insure that they are not obtrusive and to diminish the visual impact upon adjoining properties. There is no reason to approve a variance that would be contrary to this intent.
7. The petitioner's request for variances from the requirements of Section 3-6.1 appears to be a request to allow development that the Zoning Ordinance clearly does not permit.
8. 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.

There are no extraordinary or exceptional conditions pertaining to the subject piece of property because of its size, shape or topography. The property is not different from other property along the Wilmington River.
 - (b) The application of this chapter to this particular piece of property would create an unnecessary hardship.

The application of the development standards to this particular piece of property would not create a hardship in the development of the property. Any hardship

(not being able to exceed the building size and height and setback provided for in the law) is a necessary one applied to all property owners in similar circumstances.

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

There are no conditions peculiar to the particular piece of property involved. All river- front properties are similarly situated and under the same restrictions. There is no reason to exempt only this lot from the requirements.

- (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 the granting of height, square footage and setback variances for an accessory structure appear to not be met.

Mr. Day asked how much of a setback variance was being requested?

Mr. Howell stated that Section 3-6.1 requires 10 feet from the property line. He stated that they were showing 5 feet and were asking for a 5 foot variance from the lot line.

Mr. Cohen asked if that would be a 50% encroachment?

Mr. Howell stated, yes.

Mr. Day asked what does the zoning law state in regard to a building such as the proposed structure having a separate meter.

Mr. Howell stated that separate meters are not permitted.

Mr. Day asked could the structure have a kitchen and a bathroom?

Mr. Howell stated that the application was for an accessory structure. There was nothing on the application to indicate anything other than an accessory structure, a three-car garage with storage.

Mr. Day stated he was looking at a drawing that appeared to be a little bit more than that.

Mr. Howell stated that the structure exceeds the square footage by a substantial amount.

Mr. Day stated that the design appeared to be more than an accessory structure.

Mr. Howell stated that the Zoning Administrator is present and can tell the Board what is allowed. He asked if everybody received a copy of the large drawings showing the building footprint of the structure.

Mr. Howell stated that the application submitted by the petitioner is for a variance to build a garage storage area over 900 square feet to 2,928 square feet per section 3-6.1. He stated that there are some other items on the list and a copy of the ordinance submitted in the packages as it relates to accessory buildings on lots that front rivers and marshes. The size, 900 square feet is the limitation, one-story in height and located 10 feet from adjoining property lines.

Mr. Cohen asked is the proposed structure more than one-story in height.

Mr. Howell stated that it is proposed to be two-story.

Mr. Cohen asked if there was any reason why a one-story structure could not be built?

Mr. Howell stated that he could not find a reason and nothing was submitted by the petitioner explaining why there was a need to request a two-story building.

Mr. Jensen stated he wanted to point out that when the building permit was first applied for it showed a bathroom and kitchen on the second floor the Inspections Department turned it down. He said when the petitioner came back for this request they had revised the drawing. He said the building permit will be voided. If the Board grants their request, the petitioner will have to reapply with a new drawing.

Mr. Day asked if the petitioner at some point-in-time says they would really like to do a bathroom and kitchen, they would have to get a building permit, but would they have to come back before the Board?

Mr. Jensen stated they could not come back before the Board because it was not a permitted use. He said they would have to seek a rezoning.

Mr. Jack Eades (Property Owner) stated he purchased the property October 2003. He said his father-in-law is 84 years old and is a very independent man who is of sound mind, but not as sound body. He said he lives a fair distance from him and his wife. He said they would like for him to live on their property, so they wanted to build a guesthouse on their property for him. Partially, their aims were altruistic, but not fully so because they would also like to have some garage space to park another car and for him to park his car. He said his father-in-law still got around pretty good, but they anticipate as time goes on he would become a little bit more infirm. He said that was the reason on the initial set of plans, which showed a downstairs apartment with a kitchen and bathroom with handicap access, so this would be another dwelling. However, he would not characterize it as a multi-family development because it was for family use only. But they would like for his father-in-law to retain a degree of his independence and be on the property with them.

He stated in reference to the garage space, that they wanted to have an extra bay in the garage in addition for his car and one of their cars for them to have a workshop. He said the reason they wanted an upstairs area was so they could have an area for use by his father-in-law and his family. He said a room that could be used as a game room, hobby room or family room. He said that was the rationale for building a house and why they asked for the larger size than what was code. Also, the reason they would like the building to be 5 feet off the property line was because of the topography of the land. He said they had several large live oak trees. And the area where they laid out the house they did not want to infringe upon an oak tree that was close by if they were 10 feet off. The other reason they would like the building to be 5 feet off is because it would be easier ingress and egress around the driveway. He said if they pulled it 10

feet off the property line the building would be about 1 foot – 18 inches away from their graveled driveway, and when delivery trucks come through they could hit the corner of the building. He said he talked to both of his neighbors on either side of the property and have letters from them saying they were not in opposition to his petition. He said if the Board had any technical questions he would Alan Mock, contractor answer. But he would be happy to answer any other questions the Board may have.

Mr. Sharpe stated today's special meeting was being held in order not to promote expediency in business, but to relief distress. He said he would like to thank the Board members for coming out today for the meeting.

Mr. Eades stated he appreciated the Board coming out and recognized it was relief of a distress situation. He said he did not intend to profit from this at all.

Mr. Day stated in his opening statement he said his family member insisted that he not live in their home. He asked where would he live?

Mr. Eades stated he would live in their guest-house.

Mr. Day asked how was that possible because there was no bathroom and kitchen in this building?

Mr. Eades stated he was mystified when that was mentioned earlier because they had intended to have the bathroom and kitchen in the downstairs area for him to live in beside the garage. He said he was confused on that as well.

Mr. Day asked Mr. Jensen if this was the situation and Mr. Eades is planning on having a full bathroom downstairs for his father-in-law, should the Board even be considering this zoning request.

Mr. Jensen stated that the Board could not consider the request if that is what the petitioner wants to build, but that was not what the application showed. However, he could solve the problem very simply by subdividing the property. If the property was subdivided into a minor subdivision, he could build a second house on the new lot.

Mr. Day asked if the petitioner had to go before the County Board for approval?

Mr. Jensen stated no, but he would have to go before the County Commission to get the subdivision approved, but it would probably go through. He said that would be the way to do it, not seek a zoning change, but simply subdivide the property and put a second structure on the lot. He said the only problem with that was he would need a septic tank if he had public water.

Mr. Eades stated, yes. He further stated that they had planned to have both structures run off the same meter and the same gas, so that he and his wife would be paying the utilities on the building. He said he did not want the Board to get hung up on the fact that he said that his father-in-law did not want to live in the house with them. He stated that he wanted to be respectful of their privacy. Moreover, if they tried to put him in their house and anticipating what the future holds, they were much better off having him in a dwelling that would be ground level. He stated that their house was built up by four-feet and they would have to make numerous modifications. Also, at some point-in-time they may have to get live-in assistance. And if that were the case, it would be far better to have it a free-standing dwelling.

Mr. Day stated that it appeared to him that they wanted to create a living structure for his father-in-law, where he could be fully self-sufficient in that living space. There may be space for you and your wife and daughter to interact with that individual, but in that space. In essence, the primary reason the petitioner is before the Board is to provide a living space for his family member. A full-time living space. Mr. Day asked if that was correct?

Mr. Eades stated, yes.

Mr. Day stated that if that is fact, the only way to get that accomplished is to get a meter on the separate structure. He stated that Savannah Electric is going to insist that there be a separate meter on the house. There will need to be breakers on the house for fire within a certain amount of feet so that they can kill the electrical. He said he felt what they were trying to do was to create a structure that his father-in-law could live in fulltime. And in order to accomplish that he was going to have to have the basic necessities of a home, which would be a kitchen, bathroom, a garage in this case, and whatever else he deemed necessary. However, he felt that what the petitioner was trying to accomplish was going about it in the wrong direction. He said he felt the lot should be subdivided into two lots, then the petitioner could do what it is that he is trying to do. He said he did not believe that what he was trying to do would accomplish what he was trying to get accomplish in the end result. He said if the Board granted the petitioner a variance and allowed him to build the second structure, he would not be able to put a kitchen in it, bathrooms, hook up an electrical meter, or the basic necessities of life. He asked what would be the point.

Mr. Eades stated that he hears what is being said, but he was confused that if there were other properties up and down Wilmington Island Road with guest houses on them like that, how would that be different than his case?

Mr. Day stated each individual case is judged on its on merits.

Mr. Jensen stated yes, there were other properties like that. He said a few of them were grandfathered in. Others, unbeknownst to him, were two separate lots owned by one person, which they subdivided their property. He said that is what the Board was suggesting to him as well that he subdivide the property, which would allow him to put another dwelling on his piece of property. He also pointed out that the petitioner mentioned the house was 4 feet above grade, which he felt was because he was in a flood zone. He said if he created another dwelling unit on the second piece of property within the same flood zone it would also have to be elevated at 4 feet if that is the case. He said it may have been elevated because they wanted it that way, but he did not know. But even if the petitioner subdivided, the second dwelling may have to be elevated and that there may be no getting around that, in which there was no variance required.

Mr. Day asked what if the living space was on the second floor?

Mr. Jensen stated then he could do that. He added being granted the variance the petitioner was requesting was not going to solve his problem. He said he would not be allowed to build a house the way he wanted. But if he subdivided as suggested then he could build a structure. He said he would be 7 feet off the line instead of 5 feet, unless the petitioner came back and got a variance.

Mr. Eades asked what was the procedure to have a lot subdivided?

Mr. Jensen stated he would advise him to do two things. First, go to the Health Department to make sure that they will grant him a septic tank for the property. He said the process for subdividing it that he call a surveyor and tell that he wants to create a minor subdivision. Then the surveyor goes to the Health Department, and they will say either “yes or no” that a second septic tank can be put on the property. He said he would also need to check with Gary Plumbly, Metropolitan Planning Commission, about access to the property. He said as part of the process the surveyor will get minor subdivision signed off by the Engineering Department, Metropolitan Commission, County Commission, and Health Department. It goes to the tax office where it is recorded as a separate lot. He said he gets PIN for the second property and he can apply for a building permit on a new lot.

Mr. Eades asked what was the timeframe for this process?

Mr. Jensen stated he would say it depended on his surveyor. He said if he could walk it through it would not take long.

Mr. Eades asked as a point of information if the minutes of this proceeding looked at by the tax assessors or appraisers, etc.

Mr. Sharpe stated the minutes could be reviewed by anyone who wanted to look at them.

Mr. Eades stated he would like to correct a statement that was made. He said he did not have over 100,000 square feet of property, which would be greater than 2 acres. He said on the surveys shown the Board could see that most of the properties were about 1.3 or 1.4 acres. He said he would like for this to be reflected in the minutes.

Mr. Day asked how would he like the Board to proceed? He asked the petitioner if he wanted the Board to consider his petition? Or directing the question to Staff, he asked if the petitioner could withdraw his petition if he decided that he wanted to have the lot subdivided?

Mr. Howell stated the petitioner could withdraw his petition if he wants.

Mr. Eades stated he would like to confer with his contractor.

Mr. Watford added that he felt the regulations also said that on the foundation that he could lay out the batten boards, but he could do no digging before he had a permit. He said when he rode by the property yesterday it looked like a lot of dirt had been moved around. He said he felt his contractor should know the regulations.

Mr. Jensen stated even if the petitioner gets the three variances that he is requesting at this meeting that would not get him the structure that he was looking for. He added it would not have a bathroom or kitchen. He said this Board did not have the purview to get him a variance for that. He said he would either have to subdivide the property or seek a rezoning for multi-family dwellings. He said those were the only two ways to do it.

Mr. Howell stated in reference to the dimensions 946' X 170' wide, basically were the dimensions of the lot. He also reiterated that on the application, the petitioner was not for an accessory dwelling. He said what the petitioner put on the application was for an accessory structure. He agreed with Mr. Jensen that this would constitute a rezoning or subdivision of the property.

Mr. Cohen stated he felt before the public speaks, the Board first should let the petitioner confer with his builder because they may decide to withdraw their application, so the rest may be unnecessary. Secondly, he felt they had a right to here in the hearing while this other testimony is going on. He suggested that the Board wait for a few minutes before proceeding.

Mr. Alan Mock, Mock Construction, stated this has been maybe his second time before the Board. So, he was not sure of all the protocol and how to do certain things. The reason he started doing the batten boards and foundation was they were told by Angela Mitchell, County permitting office the first part of January that they could pickup the permit because it was ready. He said that was when they found out that several things were not right. He said they have done a lot of homework with this and researched photographs. He said based on the comments he felt they knew the direction they needed to go with this. He said he appreciated the Board taking time out of their schedule to be here today.

Mr. Eades stated he felt the advice coming from the Board was they needed to withdraw his petition. He asked if he was correct in his assumption?

Mr. Cohen stated he felt if he did not withdraw his petition that there was a great probability that the petition may be denied.

Mr. Eades asked if he would need to make application for the property to be subdivided?

Mr. Jensen stated he could ask for the three variances that he was requesting, but it will not get him where he wanted to be. The only way he could get where he wanted to be was to subdivide, which was simplest of the two or seek a rezoning for multi-family. However, he felt the latter would even be more difficult than the process that he was going through right now. He said once he has subdivided the property, which was between him and the surveyor, when he has created a new piece of property if he had a septic tank or needed a septic tank, he would have to be 7 feet from the side property line. He said if he needed to be 5 feet then he would have to come back before this Board to get a variance for 2 feet. If he has public water and sewer he could be 5 feet from the side property line and he would be okay. As to the height of the building it could be two stories. As to the height of the finished floor, which depended on the flood zone, which would have to be determined by looking it up because he did not know what that was.

Mr. Eades stated he was a little bemused by the entire process. He said he would hate to think that anyone time was wasted here today. However, he felt in light of all the humor present in the room that everyone got some very good light-hearted entertainment.

Mr. Day stated if he gets accomplished what he wanted accomplished and stayed within the guidelines of Chatham County Zoning laws then what the Board has accomplished today is exactly what they were here for.

Mr. Cohen asked the petitioner if he was withdrawing his application?

Mr. Eades stated based on the Board's recommendation he was withdrawing his application.

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the special meeting was adjourned approximately 11:50 a.m.

Respectfully submitted,

John Howell,
Secretary

JH:ca