

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

July 27, 2004

9:00 A.M.

MINUTES

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Charles Stewart

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

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

RE: Called to Order

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

**RE: Continued Petition of Penn E. Myrick
B-04-33625-1
555 Suncrest Blvd.**

Present for the petition was Penn Myrick.

Mr. Sharpe stated that he would like to move the Petition of Penn Myrick, B-04-33625-1 to the end of the agenda.

**RE: Petition of Ann J. Hughes
B-04-40673-1
215 B Ferguson Avenue**

Present for the petition was Ann Hughes.

Mr. Sharpe called for the Staff report.

Mr. Webb gave the following Staff report.

The petitioner is requesting to establish a use and to expand a nonconforming use (manufactured home) which must be approved by the Board of Appeals pursuant to the requirements of Section 4-5.1(8b) of the Chatham County Zoning Ordinance in order to locate a manufactured home at 215B Ferguson Drive, within an R-2 (Two-Family Residential) zoning district.

Findings

1. The petitioner is proposing to locate a manufactured home on a vacant lot at 215B Ferguson Avenue. According to the petitioner's application, a manufactured home had been located on the subject property. However, it is not known when the manufactured home was removed from the lot.
2. The petitioner is requesting to expand a non-conforming use. Actually, the petitioner is not expanding an existing manufactured home but instead is proposing to locate a new manufactured home on a vacant lot.
3. Staff's review of the petitioner's application indicates that the petitioner is appealing a decision of the Zoning Administrator, who has indicated that a manufactured home is not an allowed use in the R-2 zoning district. A modular home would be permitted as a matter of right on this lot in this zoning district or any other residential zoning district.
4. Section 10-6.3 of the Chatham County Zoning Ordinance provides that the Board of Appeals may grant variances in specific cases provided, however, that a variance shall not be granted to permit a use of land or building that is prohibited by the zoning ordinance in the zoning district in question.
5. Regarding the request for an extension of a nonconforming use, Section 10-6.4 of the Chatham County Zoning Ordinance states: "The Board of Appeals may authorize, upon appeal in specific cases, an extension of an existing nonconforming use involving an increase in either or both the land area or the floor area in a building or buildings occupied by a nonconforming use, and an extension of an existing nonconforming use involving an increase in the land area occupied by an open use of land which is a nonconforming use. " This provision of the Zoning Ordinance does not apply to the petitioner's application because it depends upon the existence of a legally established nonconforming use.
6. Section 10-6.2 of the Chatham County Zoning Ordinance provides that the Board of Appeals may hear and decide upon requests for permission to establish uses upon which the Board of Appeals is required to pass under the terms of the zoning regulations. Specific findings must be made by the Board of Appeals to approve such uses. However, the use requested by the petitioner (i.e. manufactured home) does not fall within the category of uses upon which the Board of Appeals is required to pass. Instead, the proposed use is specifically prohibited in the R-2 Zoning District.

Summary of Findings

The opinion of the Zoning Administrator that the Board of Appeals is not legally empowered to approve a use that is prohibited by the Zoning Ordinance is correct.

Mr. Day asked why was the petition before the Board if they were not legally empowered to do this?

Mr. Sebek stated he tried to explain that to the petitioner, but at the same time he felt that he could not deny her due process if the petitioner felt they wanted to pursue it.

Mr. Cohen asked what was the hardship?

Mr. Sebek stated it was the contention of the petitioner that the reason that the nonconforming use lapsed was because of family death and other family circumstances.

Ms. Hughes stated her cousin owned the property. She said her daughter has a mobile home on part of the property and she has the part of the property. She said her cousin died and it was a while before they could get her Will probated and her (cousin) husband also had died. She said when the family got everything together they contacted her daughter because she had first choice at the property, but her daughter could not buy the property because she is disabled. Ms. Hughes stated that she was also disabled, but they helped her daughter to purchase both pieces of property. So, her daughter has a part and she has the other part and she could not afford to move somewhere else. She said she just wanted to move back closer to her daughter and the neighborhood. She said she could not build a house and she did not want to live in a high rise. And if she is going to pay for the land, she wanted to be there.

Mr. Day asked if there were other mobile homes in the area?

Ms. Hughes stated yes.

Mr. Cohen asked why she could not consider a modular home, which would be in compliance with the Ordinance?

Ms. Hughes stated she could not afford extra monthly payments.

Mr. Cohen asked if she has checked into the prices of modular homes?

Ms. Hughes stated no, because she did not know which way to go.

Mr. Cohen stated he felt that she may need to look into it because the Ordinance clearly says that what she wants to do was prohibited. He said he was in the area yesterday and the neighborhood was going towards traditional homes. He said the trailers or mobile homes that were being removed were being replaced by manufactured and traditional homes, which were in conformity with the Ordinance.

Mr. Day stated if the Board granted a variance it was in perpetuity, which meant the variance goes with the property. And whether she owned the property or if someone else owned the property, if the Board granted the variance it says that a mobile home can be put on that property. He said he was concerned about if the Board had the legal authority to grant her a variance, but he also understood her point. He said from his perspective, but she would have to make that decision, that maybe this petition needed to be tabled, so the Board could get an opinion from the County Attorney on whether they had the authority to do that.

Mr. Benny Williams (Neighbor) stated he had a letter that was signed by him and his father-in-law. Mr. Williams read the letter into the record.

“We are neighbors and owners of opposite property directly across Ferguson Avenue and have no objections to the granting of this variance. We have lived at this location for 20 years. The existing mobile home and the property on which it sits have always been maintained well and the neighbors live peaceably. Until fairly recently there were two mobile homes on that large lot.”

He further stated that the property was subdivided some years ago. And a few years ago his family came before the Board to stand against locating a mobile home there. When they came to the meeting they were advised that there was no reason for the meeting because there had been a mobile home there existing and they could not oppose it. He said after a few years they reassigned their values and now feel that this would be a case where it would be good to grant a variance. Currently, there were two mobile homes that were adjacent to his sister-in-law's house, which have been there for a number of years. He said they have not been maintained nearly as well as the opposite property. He said there was a mobile home park that was located north between their property and Diamond Causeway and Kroger property. He said there was also mobile home properties on Lehigh. He said he felt this was a case where the petitioner needed some consideration and as a neighbor they would not oppose the petitioner's request.

Ms. Joan Ward stated as mentioned there were other trailers in the neighborhood. She said in reference to the modular home they did not know that was an option. However, she and her mom lived on disability income, but still felt they would not be able to consider that.

Ms. Hughes stated she felt they could not be blamed for the mobile home being out time wise and death occurred. She said if the estate were settled sooner they could have done something sooner. She said she could not help that there was not a mobile home put on the other piece of property sooner.

Mr. Sharpe stated to Ms. Hughes that she could either ask the Board to vote on something that they were not sure they would be voting on legally; therefore it would be imprudent for them to do that. Or, she could ask the Board to table the petition and get a continuance for this issue until they get a decree from the County Attorney to see if it was within the Board's authority to grant what she was requesting.

Mr. Lee stated he understood her circumstances and everything that she has explained to the Board today. But he would recommend that she ask the Board for a continuance, so that the County Attorney could render a decision as to whether or not the Board could consider her petition. Otherwise he would have to make a motion for denial.

CZBA Action: Mr. Day made a motion to Table the petition until next month and request Staff to get an opinion from the County Attorney on whether or not the Board of Appeals has the authority to rule on this petition.

Ms. Hughes requested a continuance.

Mr. Cohen stated that he was looking at one of the statutes that the Board was obligated to function under. He said it says concerning granting variances and allowances – “provided however, that a variance shall not be granted to permit use of land or building or structure that is prohibited by this ordinance in the district in question.” He said it would behoove her that in the

mean time that she look into the manufactured home (modular home) aspect of this to see what the cost would be because then she would have no problem.

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

**RE: Petition of Jimmy Dewberry
B-04-40905-1
10 Longfield Drive**

Present for the petition was Jimmy Dewberry.

Mr. Sharpe called for the Staff report.

Mr. Webb gave the following Staff report.

The petitioner is requesting a 3.2 foot rear 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 build additions onto an existing house at 10 Longfield Drive, 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 following development standards apply: the minimum lot width is 70 feet; the minimum lot size is 12,000 square feet; 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 minimum side yard setback is five feet; and, the minimum rear yard setback is 25 feet.
2. The petitioner is proposing to construct an addition to an existing single family house at 10 Longfield Drive. The addition would encroach 3.2 feet into the 25 foot minimum rear yard setback. The petitioner is requesting a 3.2 foot rear yard setback variance .
3. 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 width and has an irregular shape.
 - (b) The application of this chapter to this particular piece of property would create an unnecessary hardship.

The application of this chapter to this particular piece of property would create an unnecessary hardship.
 - (c) Such conditions are peculiar to the particular piece of property involved.

The lot is substandard in width and irregular in shape because of its location at the end of a cul-de-sac street.

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

Relief, if granted, would not impair the purposes and intent of the Chatham County Zoning Ordinance.

Summary of Findings

All the conditions required for granting a 3.2 foot rear yard setback variance appear to be met.

Mr. Dewberry stated he had an existing back porch onto the house and he was proposing to enclose the back porch. He said the property line ran at an angle to where the back of the house sits. He said they were not going to put an additional back porch onto the addition.

Mr. Leonard Prince (Neighbor) stated his concern was that he and his wife have health problems and in the future they may have to sell their home. What concerned him was if the property value of his home would decrease because of the close proximity of Mr. Dewberry's home and if it would be made worse by the addition.

Mr. Cohen stated he did not think anyone on the Board could answer that question. He said he felt that was something that he may not know until the time comes for him to sell his home.

Mr. Day stated basically what the petitioner was talking about was walling in the porch. Realistically, he felt the only way that he could tell if his property was going to be devalued by this action was through a qualified Residential Appraiser and there was no one on the Board who could do that.

CZBA Action: Mr. Lee made a motion to approve the petition as submitted. Mr. Day seconded the motion and it was unanimously passed.

**RE: Continued Petition of Penn E. Myrick
B-04-33625-1
555 Suncrest Blvd.**

Present for the petition was Penn Myrick.

Mr. Cohen stated he was not in attendance when this petition first came before the Board and felt the better course would be for him to abstain from this petition.

The petitioner is requesting approval of the following:

- a 6,627 square foot lot area variance and a 57 foot lot width variance for Lot A-1B-A;
- a 5,544 square foot lot area variance and a 59 foot lot width variance for Lot A-1B-B;
- a 46 foot lot width variance for Lot A-2-A;
- a 47 foot lot width variance for Lot A-2-B;
- and a 47 foot lot width variance for Lot A-2-C

pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to recombine two parcels of land and subdivide to create five one-family residential lots at 555 Suncrest Boulevard, within an R-1-C (One-Family Residential) zoning district.

The petition was continued from the May 25 and June 22, 2004 meetings per the request of the Board in order to obtain an opinion from the County Attorney concerning Section 3-4. An opinion has not been received but is anticipated prior to the meeting.

Findings

1. As defined in the Chatham County Zoning Ordinance, the purpose of the R-1-C zoning district “shall be to create an environment in which one-family dwellings are permitted in order to promote stability and character of low-density residential development with adequate open space. A maximum density of 1.35 dwelling units per acre of net residential land area shall be permitted in this district.”

2. The petitioner proposes to recombine two parcels of land (Lot A-1 and Lot A-2) and subdivide to create five one-family residential lots. The two parcels total 5.7 acres. The five proposed dwellings result in a density of 1.14 dwelling units per net acre.

Lot A-1 (parcel 1-0082-01-020) contains 1.8 acres of highland and does not have direct frontage onto Suncrest Boulevard. Access to the lot is shown as a 22 foot wide access and utility easement. The lot width is approximately 85 feet.

Lot A-2 (parcel 1-0082-01-013) contains 3.9 acres of highland. The lot width is approximately 161 feet.

3. Section 4-6.1 of the Chatham County Zoning Ordinance provides that within an R-1-C zoning district, for dwellings served by public water supply and individual waste disposal systems, the minimum lot width is 100 feet and the minimum lot size is 32,000 square feet.

4. Lots created from the original Lot A-1 would have the following lot width and lot area:
 Lot A-1B-A: 43 feet wide and 25,373 square feet
 Lot A-1B-B: 42 feet wide and 26,546 square feet

Lots created from the original Lot A-2 would have the following lot width and lot area:
 Lot A-2-A: 54 feet wide and 54,180 square feet
 Lot A-2-B: 53 feet wide and 50,824 square feet
 Lot A-2-C: 53 feet wide and 47,550 square feet

Based on the minimum requirements of 100 feet of lot width and 32,000 square feet of lot size, all of the proposed lots would be substandard in lot width. Two of the five proposed lots would be substandard in lot area.

5. Section 3-4 provides that a lot shall not be reduced in size so that the total area and lot width required by the ordinance are not maintained. The Board of Appeals shall not be authorized to vary this requirement.

6. 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 two current lots are regular in shape and size. There are no extraordinary and exceptional conditions pertaining to the subject piece of property.

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

Applying the development standards to the existing property would not create a hardship.

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

The regular shape and size of the current lots is not a peculiar condition.

- (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 and the Island Land Use Plan. The Board of Appeals is being asked to create substandard lots.

Summary of Findings

All of the conditions required for granting the requested variances do not appear to be met.

Mr. Howell further stated that the County Attorney’s ruling states – “given the fact that R1-C requires a minimum lot width, Section 3-4 does not permit a variance in regard to lot width, but expressly provides that the Zoning Board of Appeals shall not be authorize to vary this requirement.”

Mr. Lee stated he felt based on the County Attorney’s opinion that the petition was moot and the Board could not rule.

Mr. Myrick stated he would like to request a continuance.

Mr. Sharpe stated he appreciated his concern, but he would first like to hear any comments from the Board.

Mr. Lee stated he did not feel the Board should grant a continuance because the County Attorney was telling the Board that they did not have the authority to grant what Mr. Myrick was requesting. So, to continue the petition and the Board comes back next month as far as he was concerned he would make the same motion that the Board did not have the authority to act. He said he felt Mr. Myrick needed to go before the MPC. But if he understood what the County Attorney was saying was the MPC also did not have the authority to grant the variance. He said he felt what the petitioner needed to do was rethink his subdivision or go before the County Commission to see if they will give him some sort of relief.

Mr. Day stated the County Attorney was saying that the County Board of Appeals did not have the authority to grant a variance in lot width. He said the Board had a request before them and he felt the Board did have the authority to deny. So, based on what the County Attorney was telling them then if the Board denied the petition the petitioner had one choice, which would be to go before State Court. The other option he could do was to withdraw his petition and go before the County Commission and ask them for a text amendment. He said he was looking at this based on what the County Attorney was telling the Board.

Mr. Cohen stated he felt the petitioner should have a full opportunity to express himself.

Mr. Myrick stated he was before the Board two months ago. He said to the convenience of the County, Board, and himself he was asked to continue the petition for the County Attorney to make a ruling on this. So, he waited 30 days and at the last meeting, a couple of days before the meeting was to happen he received a telephone call and he was told that the County Attorney has not had the opportunity to review his petition and would he please request another continuance, which he agreed. He said he requested that continuance which brought him to this date, which was 60 days for the County Attorney to be able to read the legal rendition of “yes that is what it says.” Now, what has happened is that the County Attorney read it and put it out at 3:00 p.m. yesterday afternoon. He said it did not give him any time whatsoever because they did not know how he was going to rule. And since the Governor of Georgia put out a ruling a couple of years ago that you could not write into ordinance or law that could not be appealed. You could not take away a person’s right to appeal. He said that was a legal rendition, and they were not going there with that at this time. But at the advice of the head of MPC, Chairman of County Commission, and his district Commissioner he requests that the Board grant him a continuance to allow him proper meetings with those authorities that they just said he could go to. He said he requests a continuance to be able to pursue this since this ruling was not made until after 3:00 p.m. yesterday. He said he would appreciate it if the Board would take that into consideration.

Mr. Bubba Hughes, Attorney (540 Suncrest Blvd.) stated he was present as a neighbor as were several other neighbors who had come to the previous meetings. He said the Board received a letter in the petition regarding the neighborhood’s opposition to this request. He said he did not what good continuing the petition was going to do if what Mr. Myrick needed was a text amendment that would have to go through another channel. He said he did not think it was fair to the neighborhood to require them to come back again and they did not speak at the last meeting because the legal issue came up and the Board wanted the legal opinion of the County Attorney. The Board now has the opinion of the County Attorney that the Board does not have the power to grant a variance under these circumstances. So, if Mr. Myrick would have withdrawn the petition and revised his subdivision and submit it again, he would think that would be within the appropriate rules. But his relief to seek exception to the text of the code was not going to happen at this level anyway.

Mr. Cohen stated he was not going to address the substantive aspects of whether or not a variance or permit should be granted. But procedurally speaking Mr. Myrick said that he did not get the opinion of the County Attorney until 3:00 p.m. yesterday. He said as a lawyer and himself as a lawyer they do not like surprises. He said they liked opportunities to study and have a deliberate application of what it was they were thinking about and maybe get an opinion and research it. He said he did not think there would be any harm except of some inconvenience, but it was not Mr. Myrick’s fault that the County Attorney did not give enough

notice to allow him to study this and to maybe get some legal Counsel. He said he recommend and encourage the Board to give Mr. Myrick that opportunity.

CZBA Action: Mr. Day made a motion that County Zoning Board of Appeals continue the petition. Mr. Sharpe seconded the motion.

Mr. Howell stated that Staff was suggesting with the Board's determination to hear the testimony of the property owners rather than requiring them to come back.

Mr. Sharpe stated that it was only fair to hear everybody since everyone was present and made the effort to come down.

Mr. Hughes stated Mr. Myrick was asking for a variance, which according to the County Attorney the Board did not have the authority to grant. But on the basic ordinance that dealt with granting variances he felt that Mr. Myrick has not demonstrated any hardship. And his argument was essentially, it was going to cost me a lot of money to buy this property and I want to squeeze five lots on what the Zoning Ordinance would only permit he felt three at the most. He said the petitioner bought the property with this zoning in place which has been a matter of record since it got rezoned as a result of the efforts of the neighborhood they went through this in 1997, specifically to downgrade their own zoning so that they could control what was going to be in the neighborhood. He said he lived on the opposite side of the street, so he might not be as impacted as the next door neighbor. But the Board had a petition signed by all but two lot owners anywhere near the property in question. There was just no basis for a hardship here other than trying to squeeze more residential lots than the law presently allows. He said he did not want to make a legal argument because the Board had the County Attorney to give his advice, but he felt it did not fit the requirements of the ordinance or a variance. Having been zoned the way it was zoned when he bought it and there was no evidence of any hardship at all. He said it was not just a little variance either. The zoning district required that lots be 100 feet wide. He said a couple of these lots would be under approximately 55½ feet wide. So, you would almost be doubling the density in this area. He said it also request a reduction in the minimum square footage requirement. And again there was no hardship. He said there was a valid economic use of this property without having to overdue it and violate the terms of the Zoning Ordinance that the neighbors imposed upon their very own property to avoid this very thing.

Mr. Sharpe asked Staff when they grant subdivision plans if there was some entity that looked at it and say that it was compatible with the Islands Plan? He asked how does this happen?

Mr. Howell stated that the subdivision plans were looked at with the standards for the Islands Plan.

Mr. Lee asked if the letter that was included in the Board's packet from Judith A. Lamas dated July 20, 2004 in the attached petition would be made a part of the record today for any future meeting that the Board may have?

Mr. Howell stated yes.

CZBA Action: Mr. Sharpe stated hearing no more comments from the public or staff called for the vote. The motion was passed. Abstaining to the motion was Mr. Cohen.

RE: Minutes

1. Approval of CZBA Minutes – May 25, 2004

CZBA Action: Mr. Lee made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of May 25, 2004 as submitted. Mr. Day seconded the motion and it was passed. Abstaining to the motion was Mr. Cohen.

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 9:50 a.m.

Respectfully submitted,

John Howell,
Secretary

JH/ca