

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

September 28, 2004

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Jimmy Watford, Vice Chairman
Davis Cohen
Steven Day
Charles Stewart**

MEMBERS ABSENT:

**Michael Lee (Excused)
Robert Sharpe (Excused)**

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

**Charlotte Moore, Acting Secretary
Christy Adams, Assistant Secretary**

RE: Called to Order

Mr. Watford called the September 28, 2004 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Elaine Johnson & Thomas Johnson
B-04-33096-1
1918 Cowan Avenue**

Present for the petition was John Barr, Agent.

Ms. Moore gave the following Staff report.

The petitioner is requesting a 15 foot rear yard setback variance pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to build a new house at 1918 Cowan Avenue, within an R-3 (Multi-Family Residential) zoning district.

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance provides that within an R-3 zoning district, for dwellings served by public water supply and individual waste disposal systems, the following development standards apply:
 - the minimum lot width is 60 feet;
 - the minimum lot size is 6,000 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;
 - the minimum rear yard setback is 25 feet.
2. The petitioner is proposing to construct a new 3,190 square foot modular house on a 150 foot X 100 foot lot that contains 15,000 square feet. The dwelling would encroach 15 feet into the 25 foot minimum rear yard setback. The petitioner is requesting a 15 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 exceeds the minimum standards per width and lot area and has an regular 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 not would create an unnecessary hardship.
 - (c) Such conditions are peculiar to the particular piece of property involved.

The lot is standard in width and lot area and regular in shape and there are no conditions that are peculiar to the property.
 - (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 impair the purposes and intent of the Chatham County Zoning Ordinance.

Summary of Findings

All the conditions required for granting a 15 foot rear yard setback variance appear to not be met.

Mr. Day asked if the petitioner was present?

Mr. Barr stated no, that he was on his way.

Mr. Day stated the Board needed written authorization for him to be able to represent the petitioner, so the Board would delay hearing the petition to the end of the agenda.

RE: Petition of Maury B. Rothchild, For Savannah Foods & Industries, Inc. B-04-33191-1 Georgia Highway 25 North

Mr. Stewart stated that he and his son were in the appraisal business together. He said he has been retired for 10 years, but GPA presently was his son's client and that he would be abstaining from today's vote.

Present for the petition was Maury Rothchild.

Mr. Watford called for the Staff report.

The petitioner is requesting a 13 foot side yard setback variance for an existing building pursuant to the requirements of Section 4-6.2 of the Chatham County Zoning Ordinance in order to divide a parcel of land at Georgia Highway 25 North, within an I-H (Heavy Industrial) zoning district.

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance provides that within an I-H zoning district, the following development standards apply:
 - lot width: no minimum
 - lot size: no minimum
 - minimum rear yard setback: 40 feet
 - minimum side yard setback: 5 feet
2. The petitioner is proposing to divide a parcel of industrial property that contains industrial buildings. A result of the proposed subdivision would be that one of the buildings would be 12 feet from the new side yard property line. The building would encroach 13 feet into the 25 foot minimum side yard setback. The petitioner is requesting a 13 foot side yard setback variance.
3. One purpose of the 25 foot side yard setback requirement within an industrial district is to provide adequate space around a building for emergency vehicles and personnel. The 50 foot separation required between buildings provides a measure of protection to prevent fire going from one building to another building.
4. The proposed property line is 12 feet from a building. It is 32.9 feet from a warehouse that will be demolished and the land will be used by the Georgia Ports Authority. The petitioner submitted information that the security requirements of the Coast Guard for port facilities are that fences must be located 10 feet from a property line and in addition a 20 foot wide clear zone must be established. No development can be within 30 feet of the property line. Any development on the lot that presently contains the warehouse would be 42 feet from the adjacent building rather than the 50 feet required. The enclosed exhibit indicates the existing and future conditions of the proposed lot line and the Coast Guard required fence and clear zone locations.
5. 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 extraordinary conditions pertaining to the particular piece of property because of the location of an existing building on one of the lots.

The security requirements of the Coast Guard can still be met.

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

The application of the setback requirement to this particular piece of property would create an unnecessary hardship.

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

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 Savannah Zoning Ordinance.

Relief, if granted, would not cause substantial detriment to the public good. The distance separation between developments will provide sufficient space for protection of the industrial uses.

Summary of Findings

All of the conditions required for granting a 13 foot side yard setback variance appear to be met.

Mr. Cohen asked if the setback was from the property line to the north?

Ms. Moore stated it was from the property line. She said this line here does not currently exist, but was being proposed. She said the building exist and if the land was subdivided then the building would setback 12 feet from the property line. In the I H district a 25 foot side yard setback was required, so there would be an encroachment of 13 feet into the setback.

Mr. Cohen asked if they were subdividing the land differently than what it was already configured?

Ms. Moore stated yes.

Mr. Cohen asked if the property was being changed in order to comply with some Coast Guard security measures?

Ms. Moore stated she believed it was being subdivided to be sold to a different owner.

Mr. Day asked how much space was in between the two buildings?

Ms. Moore stated about 15 feet.

Mr. Day stated so there was already a building within the 30 foot setback requirement by the Coast Guard.

Ms. Moore stated that building would be demolished.

Ms. Maury Rothchild stated currently Savannah Foods owned all of this property. She said they were seeking to subdivide this piece of property in order to sell it to the Georgia Ports Authority. She said it was her understanding that they had a container berth that goes up this area. And Savannah Foods is selling the land and the riparian rights that extended up here, so that GPA could extend their berth up to this area. Also, they would demolish this building and utilize it for their port activities.

Mr. Day asked if GPA will build another building there?

Ms. Rothchild stated no.

Mr. Day asked if it would be a parking lot?

Ms. Rothchild stated no. She said it was her understanding that it would be a container storage area.

Mr. Day asked if there was a requirement on the amount of setback for container storage?

Ms. Rothchild stated yes. She said there were certain Coast Guard requirements. She further stated that currently all of this was Savannah Foods property and there was no problem with any setback between these two buildings. The variance that they were requesting was between this proposed property line and their existing warehouse. She said the GPA has every plan to demolish this building. She said they were not going to put up any kind of fence line until the building is demolished. And the reason for that was because there were certain Coast Guard requirements for setbacks. Therefore, they were requesting a 13 foot variance. However, the Coast Guard requires that their fence line be 10 feet back from the proposed property line. So, in essence you would have 22 feet between the property line and the existing warehouse as opposed to 25 feet. In addition, you would also have an extra 20 feet back from this fence line to where they could put containers or whatever else they chose to put on their property to perform their business. So, between their activity and Savannah Foods warehouse activity you would have 42 feet from one structure to any other use. She said GPA had to have a clear zone of 20 feet, which are Coast Guard requirements.

Mr. Day stated the concern was that once the Board granted a variance for this piece of property is that it goes in perpetuity. And if the Georgia Ports Authority decided that they wanted to build a building on that lot at some point in time, what was to say that they were not going to put that lot reasonably close to the new property line.

Ms. Rothchild stated she would have to defer to GPA on that question. However, she had a letter that they obtained from the Fire Chief of the Port Wentworth Fire Department. She also said that in the Staff report it mentioned one purpose of the 25 foot side yard setback requirement within this zoning district was to provide adequate space around a building for emergency vehicles and personnel. She said that they invited the Fire Chief to come out and inspect the property, which he did. She said they gave him a copy of the request for a variance and also the GPA letter that was included in the variance application. She said they also had all of the proposed variances mapped out as required in the variance requirements. She said based on that in the next to the last paragraph he says – “based on his review the Port Wentworth Fire Department believes that there is adequate space for fire apparatus travel.” So, they believed that concern of the Metropolitan Planning Commission has been met.

She further stated that in the Staff report, paragraph 4 it states – “any development on the lot that presently contains the warehouse will be 42 feet from the adjacent building rather than the 50 feet required. However, she said they felt that was adequate space.

Mr. Cohen asked if the Coast Guard was making an adjustment to their requirements?

Ms. Rothchild stated no, they were complying with the Coast Guard requirements. She said the Coast Guard requirements was to be 10 feet back from the proposed property line and 20 feet back from any future use.

Mr. Cohen asked why could they not go to the Coast Guard and ask them to adjust their rules or regulations instead of the Board of Appeals?

Ms. Rothchild stated there is a procedure in place for them to seek a variance from the zoning requirements and they believed that all of the conditions have been met. She said there were extreme circumstances on behalf of the Georgia Ports Authority to use that property to its greatest extent possible. Also, it would create undue hardship for them to have to move the building. She also stated that as she understood it the Coast Guard requirements stemmed out of the 911 situation and were in place for security reasons, so that you could have visibility between the property line and any kind of containers. She said she did not think there was a procedure in place for them to seek a variance from those requirements.

Mr. Day asked which building were they asking for a variance?

Ms. Rothchild stated they were asking for a variance of the current side setback requirements for the existing warehouse.

Mr. Day stated for future use there was still a zoning requirement for side setback on any new building that would ever be built on the lot. Or were they planning to tear down that building?

Ms. Rothchild stated they would continue to use that existing warehouse.

Mr. Day stated he meant the one that they were selling. He said if they tear that one down and decide to build another building on that lot there was still a zoning requirement for side yard setback. He said if they decided to build they would have to either maintain the governed setback distance or they would have to come back to the Board requesting a variance in that side yard setback for any new building that was going to go on that lot.

Ms. Rothchild stated she could not speak for the GPA because she did not represent them, but to the extent that those laws apply to the GPA.

Mr. Day stated that was also a question if the laws applied to the GPA.

Mr. Cohen stated he felt they did because he has not heard reason why they would not apply. He said if they did not apply why were they before the Board.

Mr. Day stated they were not, Savannah Foods was.

Mr. Cohen asked if the Board could include a condition along the lines of what Mr. Day said that if the Board grants the petition with the condition that any subsequent building that is erected on the property be required to meet all setback requirements presently in place.

Mr. Day stated if they have control over the GPA and if the local zoning laws apply to the GPA.

Mr. Cohen stated if GPA was exempt from the requirements then they need not listen to anything the Board has to say.

Mr. Day stated his concern was that if the laws do not apply to the GPA by the Board granting this variance what they would be saying is that they can build a building wherever they wanted to build with disregard for any setback.

Mr. Cohen stated he has never heard an idea that the GPA or any other state agency was not subject to the zoning laws of Chatham County. He said assuming that GPA was subject to the zoning laws of the County then what the Board does today will have impact on the GPA as to what they could or could not do. He said if the Board did not grant the petition that would be the end of it. But if the Board did give it to them and put the condition in there that any subsequent building be built in conformity with existing zoning requirements then they would be bound by that as well.

Mr. Sebek stated he believed that the variance was for the building that was existing above the property line. He said there was no variance on the bottom portion of the existing property. He said they just wanted a variance so that they could divide the property at that point.

Mr. Day stated he was concerned that if at some point in the future a building put on this lot where this one was being torn down he just wanted them to be governed under the zoning laws.

Mr. Sebek stated he was saying that he did not believe the Board was making judgment to that property. He said it was the other piece of property.

Mr. Day stated his point is if they are governed under the zoning laws then “yes” they would have to abide by that, but if the GPA, which he would assume is a state agency if they are not governed under the local zoning laws then they could a building wherever they wanted.

Ms. Moore stated the IH district had a 25 foot side yard setback and it was her understanding that the Coast Guard setback would be greater at 30 feet. So, even if the GPA did not have to comply with the zoning ordinance they still had to comply with the Coast Guard standard of 30 feet, which was greater.

Mr. Cohen stated if the Board denied the petition the result would be either the petitioner do not transfer the property to GPA because it did not meet their requirements or they transfer a smaller piece of property that may or may not meet their requirements.

Ms. Rothchild stated that was true. However, they believed that it would be undue hardship to either party for them to change the dimensions. She said it would be an undue hardship for Savannah Foods to have to move their existing warehouse in the north direction and GPA believed that it would be an undue hardship for them to have less use of their property. She said they had plans to use that property for the purpose of conducting their business and to move it back any further they believed would be an undue hardship.

Mr. Cohen stated they wanted to convey them property that was set aside for the County. He said they wanted to change the setback requirements for an additional 13 feet closer to their building so they could convey more property to GPA for their use.

Ms. Rothchild stated that was correct. However, they believed that all the conditions were still met to seek an application for a variance. She said they also believed there was no harm to the public good. She said there was no other adjacent property owners that objected and there was no danger to the public good in type of safety aspect as evidence by the Fire Chief's letter.

Mr. David Challer (Deputy Executive Director for GPA) stated the plan as the Board has heard was to demolish the warehouse once they completed the transaction for acquisition of that property for Savannah Foods. He said they would then establish a fence line as stated by Ms. Rothchild seeking the variance. He said to construct a building (permanent facility) would be contrary to the activities of GPA in terms of the operating activity to get containers on/off ships. He said that would completely defeat their interests and in fact that was the reason they would demolish that building. He said there would be no permanent structures there and no permanent storage of containers. He said anything of a permanent nature in that location would inhibit the ability of the stevedore to get containers from the container yard to the vessel and vice versa. Although most of them would not be here in 25 years it was appropriate for him to represent that there would never be a permanent structure built there. But he could say from an operating perspective their endeavors today were to move everything of a permanent nature out of the container yard so as to increase the productivity, to increase the storage capacity of the terminal facility itself.

Mr. Day asked what could he put in 13 feet?

Mr. Challer stated from that area along that fence line would be an access of a permanent open area where trucks would travel to and from the berth with containers. He said the reason they wanted the property was for the maximum productivity of the terminal itself. Their expectations were that business will double in the next 15 years and every square foot of property that they could make productive to accommodate that growth was vitally important to the authority.

Mr. Day stated the Board could look at this from a different perspective and the Board granted the variance and they sold the property to GPA. He said if there is a clearance to service the existing warehouse by a fire truck which according to the petitioner there would be 12 feet from the warehouse to the property line and then there would be 10 feet from the property line to the future fence line, which was a requirement of the Coast Guard authority that gives 22 feet to service from a fire and safety perspective for that building. He said if there is a 20 foot clearance or right-of-way between the fence line and any stack of containers or material they decided to put there that was going to be an open space. Then the Board have to ask themselves if the petitioner grant the variance is it going to have harm to the public good. And in essence he did not feel it would. He said they were talking about a piece of property that was controlled by the two folks who want to do the transaction. He said no other folks within the County were impacted by the request of this variance.

Mr. Cohen stated he did not see a reason to go outside the zoning requirements. He said he did not feel this was a deal breaker. He said they will just have to convey the GPA less property. And the GPA would still be able to use the property that they convey. He said whether they do harm to the community or not there were zoning requirements in place and they are told not to get out of them unless there is real good reason why the Board should. He said he did not see where the Board has been given good reason why the variance should be granted. He said the Coast Guard has their requirements, which is no concern of the Board. He said whether they impose those requirements or adjust them he felt that was a matter between the petitioner and the Coast Guard. He said the petitioner was coming to the Board wanting their variance to be granted because their project did not fit within the zoning

requirements. He said the Board gets a lot of petitions and they have to be denied all the time, so he did not see any reason why the petition should be granted.

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals to approve the petition as submitted. Mr. Cohen seconded the motion. The motion tied 1 – 1. The Chairman voted and the motion passed 2 – 1. Opposed to the motion was Mr. Cohen. And Mr. Stewart abstained.

**RE: Petition of Elaine Johnson & Thomas Johnson
B-04-33096-1
1918 Cowan Avenue**

Present for the petition was Thomas Johnson, Petitioner and John Barr, Agent.

Mr. Stewart asked what was the extra line for on the front?

Mr. Barr stated the line that went from the edge of the house to the property line was 28 feet. He said the other line went from the edge of the house to the center of the road, which was 48 feet.

Mr. Stewart asked what surrounded this property?

Mr. Barr stated undeveloped land on the left hand side if you were facing the house and a residence on the right hand side as well as residences in the rear.

Mr. Stewart asked if Medford Street was opened?

Mr. Barr stated it was not an opened street. He stated the lot next to it was opened and then his clients lot started at 11, 12, 13, 14, and 15.

Mr. Stewart asked if there was anything across the street?

Mr. Barr stated on the opposite corner there was a vacant lot.

Mr. Day asked Staff what was the setback requirement on the front yard?

Ms. Moore stated 25 feet.

Mr. Day asked what was the setback requirement from the center of the road?

Mr. Barr stated 55 feet. He said he did ask for it but in the letter he received it said that it could go either way. He said that they could go 25 feet from the property line or 55 feet from the center of the road, which he asked for.

Mr. Day asked if there was going to be a garage or carport on this house?

Mr. Barr stated no.

Mr. Day asked if there would be a driveway?

Mr. Barr stated the driveway was already there. He further explained that at one time there was the same size T-shaped house on this property. And when Mr. Johnson purchased the property it was a terrible site. He said before he was issued any type of building permit he had to go in there and demolish the old house, which he did. He said the house that was in there was basically the same design that Mr. Johnson was proposing. He said when he first started they were under the impression they were in the City limits, but quickly found out it was in the County. He said it already has City water and City sewer around it. But up Cowan Street towards the end where it stopped everyone was on septic tanks. He said he met with the City out there about the sewer they said they would allow him to bring it in from Fenwick Street because at one time that was private and it had now been turned back over to the City.

Mr. Day asked how many square feet was the house?

Mr. Barr stated 3,190.

Mr. Cohen asked how wide was it between the house and the lane?

Mr. Barr stated approximately 8 to 10 feet.

Mr. Day asked Mr. Johnson if this was going to be his personal residence?

Mr. Johnson stated yes.

Mr. Stewart stated there is a 25 foot setback and they were building 28 feet back, pushing it back three more feet.

Mr. Barr stated he did not have to. He said they could go 10 feet off the back.

Mr. Stewart asked why not 13 feet and put the front on the front line setback?

Mr. Johnson stated he thought it would look better because he wanted more front yard than back yard.

Mrs. Arlene Lewis stated when she received the letter she called and talked with someone in the office. She said they told her that the petitioner wanted to build his place 8 feet off of the main road, which she was concerned about. But, apparently that has changed or they did not intend for it to be that way. She said she owned five rental houses across the street and she owned twelve more houses around the corner. She said she was the one that put the sewer system in the area.

Mr. Cohen asked if she was opposed to the plan that the petitioner was proposing?

Mrs. Lewis stated she was not if it's 28 feet from the street, but she was told that it was 8 feet from the street.

Mr. Day stated it is 28 feet. He asked the petitioner where was the driveway going to be on the lot? He said he was concerned if it was going to be in the area that was T-shaped because a parking space was supposed to be 10 X 20.

Mr. Green stated he was concerned about the 3 feet and going into the lane. He asked if that was correct?

Mr. Day stated it will be 13 feet.

Mr. Green stated as far as them coming into the area he thought it was a good thing and he welcome him to the area.

Mr. Cohen stated before the Board was a house that was too big for the lot. He said he may need to go back to the drawing plans to redraw them so that the house fits the lot because he did not see anything that speaks of extreme hardship. He said he felt a house could be built on the lot that fit within the zoning requirements. He said either the petitioner or the agent said that the T-shape to the left up 3 feet, which would make less of an impact on the intrusion into the setback less, which he felt would be better.

Mr. Day stated he agreed. He said this is a big house. Other than the fact that the house was so big he was not sure that he saw a real hardship for granting the variance.

Mr. Barr stated he felt the hardship was by the old house and he was told that he had to do the demolition work before he could even apply for a building permit. He said he closed Mr. Johnson's loan for \$157,000 for construction his house. He said he has spent approximately \$18,000 or \$19,000 just getting the demolition work done on the property. He said he went to the City and filed for the building permit after they told him to tear it down. He said he involved the City because there was asbestos in the house in which he hired a special crew to handle. He said after all this was done the City called him and said they had looked at his application and now he needed to go to the County. The biggest problem he has in between time is this is a modular home. He said they went to the plant and have had the house built. When he ran into going from the City to the County he is at the mercy of the Board because they have paid two-thirds on the modular home.

Mr. Cohen asked why did he do that?

Mr. Barr stated he based it on what the City was telling him.

Mr. Cohen asked if he was willing to move the T up 3 feet because then the impact in the back instead of a 15 foot intrusion would be a 12 foot intrusion. He said then there would also be no violation of the zoning in the front.

Mr. Barr stated yes.

Mr. Stewart asked where will they park?

Mr. Johnson stated there was plenty of room at the end of the house to provide for parking.

Mr. Barr stated there was 43 feet from the side of the house to here that was still his property.

CZBA Action: **Mr. Cohen** made a motion that the Chatham County Zoning Board of Appeals to approve the petition with the condition that the rear yard setback be no less than 12 feet. **Mr. Day** seconded the motion and it was unanimously passed.

RE: Minutes

1. Approval of CZBA Minutes – August 24, 2004

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of August 24, 2004 as submitted. Mr. Cohen 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 10:25 a.m.

Respectfully submitted,

Charlotte Moore,
Secretary

CM/ca