

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

NOVEMBER 23, 2004

9:00 A.M.

MINUTES

MEMBERS PRESENT:

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

MEMBERS ABSENT:

**Davis Cohen (Excused)
Jimmy Watford (Excused)**

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

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

RE: Called to Order

Mr. Sharpe called the November 23, 2004 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Robert B. Brannen, Jr., For
Autobahn Service Center, Inc.
B-04-32865-1
2109 & 2111 Norwood Avenue**

Present for the petition was Robert Brannen.

Mr. Hansen gave the following Staff report.

The petitioner seeks approval of a remote parking lot for a commercial use in a residential district pursuant to Section 6-3.4 of the Chatham County Zoning Ordinance. Additionally, the petitioner seeks variances to allow a reduction of a side yard setback from 10 feet as required by Section 4-6.2 to zero feet; and the elimination of two required 25 foot wide buffers as required by Section 3-12.4.

Findings

1. **Background.** The variances sought are in conjunction with development of a proposed addition to an existing building. The subject property is zoned R-1 (Single Family Residential) and P-B-C (Planned Community Business). Both districts are located within a Towncenter Overlay (T-O) classification.

2. **Remote Parking in a Residential District.** Section 6-3.4 of the Chatham County Zoning Ordinance allows remote off-street parking serving a commercial use to be permitted in a residential district under the following conditions:
 - a. The commercial establishment to be served by the proposed remote parking shall be a conforming use. *The auto care facility is a permitted use in the P-B-C district.*
 - b. The proposed remote off-street parking shall be on residential property which either adjoins a commercial district as shown on the County Zoning Map on the same side of the street as such district, or lies directly across the street from such zoning district. *The proposed remote off-street parking is located on residentially zoned land that adjoins a commercial district and is within a towncenter overlay.*
 - c. The proposed design and proposed location of such remote off-street parking facilities shall be approved by the Board of Appeals. *The petitioner has filed for approval with the Board of Appeals.*
3. **Side Yard Setback.** The petitioner is proposing to construct a 1,361 square foot addition to an existing structure. As proposed, the “new” building would be built on the property line, thus requiring a 10 foot side yard setback variance. Typically, the P-B-C district does not require a side yard setback. However, when a proposed structure adjoins residentially zoned land, a 10 foot setback is required. In this case, the residentially zoned land which is adjacent to the proposed addition is the land upon which the remote off-street parking is requested. The proposed remote off-street parking will provide 75 percent of the required parking for the existing and expanded business.
4. **Buffer.** Section 3-12.4 of the Chatham County Zoning Ordinance requires a buffer to protect one-family detached residential property when said property is adjoined by uses such as auto repair. A 25 foot buffer and a 6 foot high fence would be required on the northerly and westerly property boundaries. The residentially zoned land that necessitates the buffer requirement is the land upon which the remote off-street parking is requested. Granting the remote off-street parking use would render moot the necessity for a protective buffer.
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.**

The subject property is not irregular in its size, shape, or topographic characteristics.
 - (b) **The application of these requirements to this particular piece of property would create an unnecessary hardship.**

The intent of requiring a side yard setback and a buffer to residential property is to maintain a certain separation and provide protection for homes from the potentially harmful impacts of the adjoining use. However, if the remote off-street parking request that is a part of this petition is approved, the commercial establishment would not be adjoining a residential use and strict application of the requirements would create an unnecessary hardship.

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

The request to establish a remote off-street parking facility to provide required spaces necessary for the existing and proposed business addition is peculiar to this particular piece of property.

(d) Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of these regulations.

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

Summary of Findings

All of the conditions necessary to approve the establishment of a remote parking lot for a commercial use in a residential district per Section 6-3.4 of the Chatham County Zoning Ordinance have been met.

All of the conditions required to grant a side yard setback variance and a variance to eliminate two required 25 foot wide buffers appear to not be met.

Mr. Day asked Staff by approving this variance if there was any detriment to the neighborhood.

Mr. Hansen stated no.

Mr. Lee asked if the lots behind this location were residential?

Mr. Hansen stated yes.

Mr. Day asked Staff if he knew if the petitioner was proposing any kind of buffer to soften the impact of a parking lot in front of the houses?

Mr. Hansen stated it was his understanding that they were proposing to fence it with a 6 foot screen wall fence, however not the required 25 foot buffer.

Mr. Rob Brannen, Attorney, stated the petitioner has been at this location approximately 9 years operating their service center. The auto repair shop has been there approximately 20 years. He said a few years ago they bought the property next to them with the intent to put some parking there for the cars that they work on and to expand their office. He said they were zone PB-C, which was a commercial zone that allowed that. But you could not do that in an R-1 zone. Last year they applied for rezoning on this property to a PB-C so that they could do that. He said as a result of that process they entered into discussions with the Sand Fly Association and also with Ms. Butterfield. Originally, the building came all the way out in front of Ms. Butterfield's house and they had parking around it. As a result of those meetings Ms. Butterfield told them that she really wanted the property to stay R-1 and she wanted to preserve her view.

He said Ms. Butterfield did not want them putting a building between her house and Norwood Avenue. He said in order to accommodate her and the other residents in the area they dropped the building back, so that it was only on their existing PB-C lot. Also, it allowed them to leave this in an R-1 zone because they could use it for remote parking.

He further stated that they satisfied all the requirements for remote parking, but there were a couple of requirements related to when you have a business next to a residential lot which did not apply anymore. He said he knew that Staff did not feel there were any extraordinary conditions, however, they felt it was an extraordinary condition because the lot was too small to use for a commercial use by itself. The only way to use it with their property and keep the R-1 zone was to request the variances.

Ms. Claudette Butterfield stated she was concerned about the building. She said as it was she had to look thru cars because they were parked on the side of her house. She said she had no way of seeing out if they put the building in this area. She said the petitioner said that they were going to move the building towards Norwood Avenue in which she would still have to look thru the cars. She said she wanted to be able to see her surroundings. She further stated that she was also concerned about not rezoning it to commercial. She said she would like for it to remain residential. She said she also talked to the owner about the dumpster because it was on the side from her house and rodents was coming into her yard. She said she asked the owner if he could move the dumpster on the Norwood Avenue side.

Mr. Day stated in her statement she said that she was looking at cars. He asked if she would prefer looking at shrubbery, bushes or hedges?

Ms. Butterfield stated she did not want it above her eye level.

Mr. Sharpe asked if the 6 foot high fence was going to be across from where her view-scape was?

Ms. Butterfield stated yes.

Mr. Day stated it was a chainlink fence, so you would be able to see thru it.

Mr. Lee stated to Ms. Butterfield that the petitioner was parking cars on the lot now. He said it looked to him that what they were trying to do was improve what was there. He said if the Board denied the petition, essentially the property would stay the way it was. Now, she was saying that she did not want to look at the cars, but she also did not want a fence to block her view. It would seem to him that either they would have to put a fence that would block her view, so she would not have to look at the cars or they would have to put something low where you still see cars.

Ms. Butterfield stated if the petitioner put something lower she would be able to see over it.

Mr. Day asked Staff if the Board denied the petition then the cars there would have to be removed?

Mr. Howell stated yes.

Mr. Brannen stated the idea that they wanted to get approval for was so that they could improve the look of the entire area.

Mr. Day stated what he would like to see rather than the neighbor having to step out each morning and look at a bunch of cars parked out there, he would rather see a green buffer about 4 feet – 4½ feet high and maintained at that level. He said he understood the petitioner needed a security fence, which was the reason for the 6 foot chainlink fence which he would also like to see remain. He said he would also like a green buffer along the front of the parking lot to shield the parking lot from the street. Also, he would like to see the dumpster relocated. Mr. Day stated that he would like the petitioner to agree at least to an intent that they would be willing to do the things previously stated.

Mr. Brannen agreed.

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals **approve** the petition with the understanding to develop the property as proposed, the petitioner will be required to receive site plan approval from the Metropolitan Planning Commission. Mr. Lee seconded the motion and it was unanimously passed.

**RE: Petition of Rande Duke, For
The Village at Georgetown
B-04-33141-1
1190-B King George Blvd.**

Present for the petition was Daniel Breitburg.

Mr. Howell gave the following Staff report.

The petitioner is requesting variances from Section 7-3.K(1) and 7-3.K(5) (Sign Standards, Directory Sign) of the Chatham County Zoning Ordinance to allow: 1) more than one freestanding directory sign on property having less than 200 feet of frontage; and, 2) more than one freestanding directory sign on the same lot as an existing freestanding directory sign that already provides sign area for all tenants.

Findings

1. **Background.** The subject property, known as The Village at Georgetown, is located at 1190-B King George Boulevard and is zoned PUD-C (Planned Unit Development Community). The property contains three separate buildings that include a shopping center, an office building, and a restaurant. Each building is on a separate parcel; however, the area outside of each building pad is common area (e.g., parking area) for all tenants. The property (i.e., the common area) has 191.6 feet of frontage on King George Boulevard and 181 feet of frontage on Grove Point Road.

Businesses within this development share space on an existing freestanding directory sign that is located on King George Boulevard. The petitioner represents four tenants that occupy the office building (Cornerstone Professional Building). The existing directory sign identifies the Cornerstone Professional Building and each tenant (four) within the office building. However, in his application, the petitioner states the building suffers from poor visibility because of its location, tree canopy, and because the existing directory sign is “too small and too crowded” to properly identify the office establishments. The petitioner proposes a separate freestanding directory sign for the Cornerstone Professional Building on King George Boulevard.

2. **Directory Sign.** A directory sign is defined as a sign containing information for a structure or development containing multiple uses. A maximum of one sign per establishment or use shall be permitted per directory sign face, and only the logo or principal name of uses within the development shall be erected on the directory sign, in addition to the name of the overall development. A directory sign may be a freestanding sign.

a. Section 7-3.K.(1) of the Chatham County Zoning Ordinance provides that one directory sign is “permitted for each 200 feet of property frontage.” An additional freestanding directory sign is allowed for every 200 feet of frontage within a development. The property has 191.6 feet of frontage on King George Boulevard and 181 feet of frontage on Grove Point Road. The petitioner desires to place a second directory sign on King George Boulevard. Although a freestanding directory sign is allowed on Grove Point Road, the petitioner does not desire this alternative.

b. Section 7-3.K.(5) of the Zoning Ordinance states that “[n]o additional freestanding sign shall be permitted on the same lot or tract of land where a directory sign is provided and available for each principle use.” Each tenant at the Village of Georgetown has a sign on the directory sign.

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.**

There are no extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.

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

The application of the Zoning Ordinance to the subject property would not create an unnecessary hardship because there are no extraordinary or exceptional conditions relating to the property. There is no reason to exempt this particular piece of property from the requirements. The existing directory sign can be relocated to better serve the development and a second freestanding directory sign can be erected on Grove Point Road.

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

There are no extraordinary and exceptional conditions 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 Chatham County Zoning Ordinance.**

Relief, if granted, would impair the purposes and intent of the Zoning Ordinance.

Summary Of Findings

All of the conditions required for granting a variance to allow more than one sign on a property having less than 200 feet of frontage and a variance to allow construction of a second sign on a lot where a directory sign is already provided appear to not be met.

Mr. Stewart asked if there were three different property owners?

Mr. Howell stated yes.

Mr. Day stated basically it would be about 9 feet.

Mr. Howell stated yes.

Mr. Stewart asked what would keep the other two groups from putting up their own individual sign?

Mr. Howell stated they could also petition the Board for additional signs, but each petition stands on its own and there is no precedent established.

Mr. Day added that every business that was on King George Blvd. that has frontage on the road could put up their own individual sign even if they only had 15 foot of frontage per property.

Mr. Stewart stated on the site visit yesterday he could not find the sign. He said he felt the sign was improperly located in respect to the access to the center. He said he felt the sign would be to everybody's advantage if it was placed where the petitioner wanted to put his sign.

Mr. Breitburg stated because of the unique way the building was located you could not see it. He said he did not know if the law says contiguous, but if you added in all the linear properties they were well over 200 feet. He also felt they had a hardship because the building itself was not visual from the roadway. He said it was also a separate freestanding building with a completely different purpose in the retail (a professional building). He said what they were thinking was the four tenants would be willing to take their names off the existing sign. And their monument sign would go in front of that. He also said that they would be willing to put in shrubs or trees to soften the look.

CZBA Action: **Mr. Lee** made a motion that the Chatham County Zoning Board of Appeals approve a second sign which will be a monument style sign as proposed. The approval is based on the application of the ordinance to this particular piece of property creates an unnecessary hardship. The size of the sign must conform to the sign regulations. The tenants of the Cornerstone Building must remove signs on the existing directory sign. **Mr. Sharpe** seconded the motion.

Mr. Day stated he was concern that there were 18 tenants in this shopping center. He said he would be more receptive if the sign was owned by the common property owner. He said there were 4 people who wanted to put a sign there and there were 13 other people that could come before and say the Board did it for those four tenants. He said what he was saying if it was owned by the common property owner, then if one of the people who were in that building moved out, then the common property owner would have the option at that point in time if someone else in the back shops wanted to put there name on that sign and somebody did not

then that could happen. Also, what you could have was if people moved out of that building you could have blank signs. He said he was concerned about that because he did not want to see a proliferation of signs along King George Blvd. He said he would like to see someone have control over that rather than four individual people who owned this one building with the potential of thirteen other people come and saying we would like to put a sign out there to.

Mr. Lee stated he understood his concern. But he felt these four tenants had a different situation in that their building was hidden, whereas the retailers could be seen from King George Blvd. and Grove Point Road. The existing sign would have additional space on it so that any of those thirteen wanted to increase the size of their sign they could do so. And as the Board always say that they do not set a precedent when they rule on any particular petition. He said he felt this was a unique situation.

CZBA Action: The motion was unanimously passed.

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

Mr. Day recused himself from the petition.

Present for the petition was Fred Buck.

Mr. Hansen gave the following Staff report.

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

Findings

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

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

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

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

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

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

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

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

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

Summary of Findings

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

Mr. Sharpe asked how did the house get built over the setback?

Mr. Buck stated at the time they were trying to site the plan in dealing with Mr. Lufburrow and going through the architectural review phase with him and his group, they had a problem in trying to properly site the house. He said in the very back they had a huge oak tree that could not be moved, so they pulled the house over as close to the property line as they could knowing that he would have an encroachment with the building setback. He said he went to Mr. Lufburrow and his group and asked what could they do. He said Mr. Lufburrow said that he had no objection to them encroaching in that area, to which he had a letter to that effect. The encroachment would be 15 feet because the Staff report said 25 feet.

He further stated on one corner of their garage they were on the setback and the other was just a wedge shape getting in there. From the recording survey plat, Lot 71 was the lot that they were working on, Lot 72 was adjacent to them and not built on, and Lot 73 a house was built on and the driveway comes straight out to the paved street. He said they knew that it had the look of a cul-de-sac at the end of Samuel Lyon and was extended on in the other direction. Knowing that they had a tight situation trying to get to the pavement which was off from the property, they designed the driveway so that they would come in at an angle. He said he understood that it was going to be tight for the three driveways, but he could move his over or make a turn on it to allow Lot 72 to have access.

Mr. Sharpe asked how was the house built over the setback and not brought to the Board before the fact?

Mr. Buck stated he thought with Mr. Lufburrow's letter stating that it was okay to encroach this property, therefore he did not think it was a problem.

Mr. Sharpe asked if Mr. Lufburrow was the architect?

Mr. Buck stated no, Mr. Lufburrow was the developer of the subdivision.

Mr. Lee asked Mr. Buck who told him that he needed to make application to the Board?

Mr. Buck stated it came about from the survey that they had made for the mortgage bank. The bank asked them what authority did they have to encroach into the building setback, which started everything moving.

Mr. Sharpe stated the Board has a letter dated November 16, 2004 from Mrs. Patricia H. Daly opposing the petition. He said the Board had a petition dated November 23, 2004 and they also had a letter from Albert Lufburrow, dated November 19, 2002. It was the previous year (2002) where Mr. Lufburrow said discuss with the County Zoning Administrator for approval before you start.

Mr. Stewart asked Mr. Buck if he talked with the Zoning Administrator?

Mr. Buck stated no. He said he thought it was okay.

CZBA Action: Mr. Stewart made a motion that the Chatham County Zoning Board of Appeals deny the petition.

Mr. Stewart withdrew his motion.

Mr. Robert Johnson (owner of Lot 72) stated he drew a diagram of where the original cul-de-sac was designed. The property in here was essentially all common property of the homeowner's association. The original survey plat demonstrated those property lines essentially ending here. He said the setbacks were originally based upon presence of the cul-de-sac. He said the driveway of Lot 73 ended here. The access to his lot (Lot 72) was vanishingly small with the current plans. He said both of the builders on either side of him built without any malicious intent. He said he was currently trying to sell the lot and has had one serious purchaser who wanted to know where they would put the driveway. He said he had a significant grievance with the current plan as it stands, which he needed corrected. He said he was not certain as to how to settle this issue, but he was concern.

He further stated that he was also concern that without notification the developer changed the plan from the original plat upon which he bought his property to not put a cul-de-sac in, but allowed the engineer to put a 90 degree bend in the road. He said he was not sure what needed to be done or if the entire area needed to be reformatted into a cul-de-sac, which he knew would also cause problems for Mr. Hendrix. But he also had a problem with his property.

Mr. Day stated in observation, the solution that he was looking for in his opinion did not lie with a single neighbor. He said it appeared to him if it was a private community then the homeowner's association needed to be involved. He said he felt that he and his neighbors

needed to go to the homeowner's association and say that they have an insufficient driveway situation. He said the homeowner's association has a responsibility to change the profile of the bend in the road, so that it provided him the amount of access that he was supposed to have. He said what he felt needed to happen was that the homeowner's association needed to take out the two driveways and put a total cul-de-sac curve in there or a half cul-de-sac curve in there, so that each person has adequate access to the street from their lots.

Mr. Stewart stated he felt if the Board approved the petition it would be promoting a legal situation. He said if they did not resolve the situation to Mr. Johnson's benefit he was stuck with a lot that has poor access and he would have to take this to Superior Court.

Mr. Day stated he felt there was a court case no matter whether the Board approves the petition or not. He said he felt the driveway was a separate item.

CZBA Action: Mr. Lee made a motion that the Chatham County Zoning Board of Appeals approve the petition subject to the driveway being reconfigured to accommodate Lot 72 as much as possible.

Mr. Johnson stated he would desire that the Board not approve the petition until there was a legal resolution to the dilemma.

Mr. Lee withdrew his motion.

Mr. Sharpe stated maybe the Board needed to defer the petition until next month. He said in that way it would give the homeowners, builder, and anyone else a chance to sort things out.

The Board agreed to defer the petition until next month.

Ms. Jest stated she was present today in two capacities as a community advocate and she also serves on the Metropolitan Planning Commission. She said she felt the Board's decision to defer the petition was good, but she would also like to ask that either Staff that serves this Board or someone with the County's building permit department be involved or at least observing this resolution. She said there was correspondence that was not followed up. The Zoning Administrator prior to Mr. Sebek may or may not have been involved. She said what she hoped to do was to empower the process, so it continued to serve people equally. Also, to hopefully research a remedy, so that "we" (those who work with permitting and planning) were empowered to prevent this in the future if at all possible. The Board has made some wonderful observations that there may have been some problems with zoning violations. And obviously there has been a disconnect in communication between departments and those who participate in this process. She thanked the Board for this opportunity and wanted to interject however possible whether it be Mr. Howell or whomever communicating with the County Administrator figure out how the Metropolitan Planning Commission and the various Boards that would handle such a process look at how they possibly missed their opportunity to prevent this.

Mr. Day stated he appreciated what she was saying. However, he thought the point in question was simply access to the driveways and felt that was the reason for the deferral. In addition, this was a private community and the County does not have responsibility for the roads. He said the only way he could see that Staff or somebody could be involved was if they were invited by the private community.

Ms. Jest stated she appreciated what he was saying and she may be misunderstanding. However, they came to the Board for a variance, so somewhere along the line...

Mr. Day stated but the petitioner was not looking to the Board for a variance on the driveway or the road. He said they were only looking for a variance on setback.

Ms. Jest stated that she was speaking to the issue of the petition and not the driveway.

Mr. Sharpe asked Ms. Jest to please take the Board's concerns back to the MPC Board.

Mr. Howell asked if the Board could make a motion for deferral of the petition.

CZBA Action: Mr. Stewart made a motion that the Chatham County Zoning Board of Appeals defer the petition until the next meeting. Mr. Lee seconded the motion and it was unanimously passed.

RE: Minutes

1. Approval of CZBA Minutes – September 28, 2004

Mr. Stewart stated paragraph 1 on page 5 of the minutes it says “repairing” and it should say “riparian.”

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of September 28, 2004 as corrected. Mr. Stewart seconded the motion and it was passed.

RE: Other Business

1. Election of Officers – Chairman and Vice-Chairman for 2005

CZBA Action: Mr. Day nominated Jimmy Watford, Chairman for 2005 and Davis Cohen, Vice-Chairman for 2005. Mr. Stewart seconded the motion and it was unanimously passed.

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 10:30 a.m.

Respectfully submitted,

John Howell,
Secretary

JH:ca