

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

JANUARY 25, 2005

9:00 A.M.

MINUTES

MEMBERS PRESENT:

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

MEMBERS ABSENT:

Michael Lee (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. Watford called the January 25, 2005 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Petition of Bettie Meador
B-05-39886-1
134 Candleberry Lane**

Present for the petition was Bettie Meador.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a rear yard setback variance of three feet pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct an addition onto an existing residence within a PUD-M-10 (Planned Unit Development-10 units per net acre) zoning district.

Findings

1. Section 4-6.1 requires a minimum 25 foot rear yard setback for residential uses within the PUD-M-10 district.
2. The subject property is a standard lot. A single family home that meets all of the required setbacks currently exists on the property. The petitioner is seeking a variance that would allow construction of a sun room to encroach three feet into the required rear

yard setback.

3. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals 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 approximately 8,218 square feet in size. Though irregular in shape (approximate 60 foot front and 80 foot rear with sides of approximately 100 feet and 110 feet), the lot is otherwise standard and it contains no irregular topographic features.

- b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Application of the regulations of the Zoning Ordinance would not create an unnecessary hardship.

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

The conditions described in a. (above) are not peculiar to the subject 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. An opaque fence is located on the rear property line. Moreover, the property backs to public right-of-way that is part of the Truman Parkway extension.

Summary of Findings

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

Mr. Sharpe asked the petitioner if they were related to George C. Meador or Michael Meador?

Mr. Jas Meador stated no. He also said that he had a letter from his next door neighbor (Burt and Mary Taylor) who said they supported their petition. He said he also talked with Ernest Frazier, the other next door neighbor who supported their petition as well.

Mr. Stewart asked if there was anyone present in opposition to the petition?

No one came forward in opposition.

CZBA Action: Mr. Stewart made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based on the finding that the relief granted would not cause substantial detriment to the public good. Mr. Day seconded the motion and it was unanimously passed.

**RE: Petition of David Alan Iannuzzi, Jr.
B-05-49914-1
9 Shad River Court**

Present for the petition was David Iannuzzi.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a front yard setback variance of 15 feet pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct a single family residence within an R-1 (One Family Residential) district. The parcel is also located within the Environmental Overlay (EO) district.

Findings

1. Section 4-6.1 requires a minimum 30 foot front yard setback for residential uses within the R-1 district.
2. The subject parcel is currently vacant. Construction of a single family residential structure is proposed. The petitioner is seeking a variance that would allow construction to encroach 15 feet into the required front yard setback.
3. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals 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 an oddly shaped parcel approximately 8,865 square feet in size. The property is five-sided with approximate dimensions of 45 feet along the curvilinear front, 73 feet along a side, 93 feet along a side, 57 feet along the rear, and 110 feet along another side. Also peculiar to this parcel is the fact that approximately 35 percent of the property is claimed as marsh land by the Georgia Department of Natural Resources (DNR).

Section 4-12.f (Environmental Overlay) requires a 25 foot marsh buffer setback from any lands so identified by the DNR. This requirement also greatly reduces the building envelope and the structure placement options that might otherwise be available on a lot of this size.

- b. The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Strict application of the ordinance regulations would create an unnecessary hardship upon the petitioner. Due to the odd shape of the lot and the need to adhere to the requirements of the marsh buffer setback, any structure proposed would be severely limited in size without the requested relief.

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

The conditions described in a. (above) are peculiar to the subject 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 or impair the purposes and intent of the Zoning Ordinance. Adjoining and nearby residential structures have also been built with front yard setbacks less than mandated by the code. Relief, if granted, would not be precedent setting, but would in fact be following the long established trend in the area.

Summary of Findings

All of the findings required for granting a 15 foot front yard setback variance appear to be met.

Mr. Cohen asked how many feet would be left between the house and the cul-de-sac?

Mr. Hansen stated 15 feet from the house to the right-of-way line. The actual pavement was somewhat less than that. He said there would be more between the house and the pavement.

Mr. Sharpe asked when this house is constructed would it impact the Islands density goal for the Islands Land Use Plan?

Mr. Hansen stated no. He said it was appropriate for one dwelling unit.

Mr. Cohen stated without the variance how many feet would be available on which to construct a residence without granting the variance?

Mr. Hansen stated he did not know the actual dimensions. However, they could make an approximation that this particular line from the rear to the cul-de-sac was 73½ feet. He said they were required to have a side yard setback of 5 feet. If you subtract the required 30 foot setback you would have approximately 38 feet.

Mr. Stewart stated what concerned him was it's a practice of developers designing lots like this knowing they were not buildable. He said he felt this was a classic example of who ever did this to crobar a building into a site that was really not big enough. He said the houses all around this subdivision were very big, well built quality houses. There were two houses on the cul-de-sac and those on each side were at least 40 feet from the pavement. He said this would be 15 feet from the pavement.

Mr. Day asked where was the line for the marsh of the lot in the pie shape? He said he felt if the Board approved this petition the neighbor would come in saying the Board approved one next door and why couldn't they build one here. He asked why weren't they asking for a variance on the marsh line?

Mr. Hansen stated that was something that could be pursued, but that was not what the applicant applied for.

Mr. Cohen stated building into the marsh involved the Department of Natural Resources (DNR). He said it was his understanding that DNR would not allow someone to build into the marsh. He said unless the builder could avoid building into the marsh in some way on this lot he was not going to be able to build or get permission from DNR of building into the marsh. He said without the setback would there be enough footage to construct a single family residence. He said he was wondering if 38 feet by what.

Mr. Day stated approximately 38 X 40, which would approximately be 1000 square foot on the floor.

Mr. Hansen stated he felt the question was not is there enough buildable land to build this structure because clearly there is. He said it was the type of structure and what the petitioner would like to build. Also, as a point of clarification they were not talking about building in the DNR marsh land. Rather, there was a 25 foot setback from the DNR marsh and they would be encroaching either into the marsh setback or as the petitioner has requested a front yard setback.

Mr. Cohen stated it would seem like it would be a more acceptable plan to give a variance in the back rather than up front. He said he felt that would be more receivable rather than building right up in the front. He said he felt the variance was coming from the wrong direction.

Mr. Watford stated from the plans he felt this house would pretty much in the other houses back yard.

Mr. Hansen stated they were setback the required 5 feet.

Ms. Christina Iannuzzi stated when they originally bought this lot they assumed it would not be a problem and that was why they looked for a lot that had the actual utilities on it because they were no problem lots. She said looking at it on paper and after it was chopped up with DNR setbacks it was not very big. She said she purchased the lot as a wedding present for her son. She said she bought the lot in 2001 and she has been working on trying to get it legalized to build on since April 2004.

Mr. Stewart asked if she bought the lot from the developer?

Ms. Iannuzzi stated no, from a real estate agent, but the property owner lived in New York. She said the owner had a proxy to come to the meetings.

Mr. Stewart asked if they told her the lot was buildable?

Ms. Iannuzzi stated yes, and that was why she went to a real estate agent for a buildable lot. Supposedly, all the lots in Brevard Point were buildable. However, from what she understood along time ago it used to be that DNR only required a 15 foot setback, which is now 25 foot.

Mr. Stewart asked if she was aware that the marsh setback lines or DNR marsh line were there?

Ms. Iannuzzi stated they were told there was a plat and it was understanding where the squiggly line was was where they could build to. She said the drawings she had and what the Board had looked different. She said they assumed the straight line and the next squiggly line was the marsh setback.

Mr. Stewart asked when did she find out?

Ms. Iannuzzi stated last year (April) to get the survey. She said they figured there was no need for anything until her son was ready to start construction.

Mr. Cohen asked if there were any contingencies in the contract such as “this contract is a valid contract provided that a building permit would issue for the building of a single family residence” or anything like that?

Ms. Iannuzzi stated no. She said they saw the covenant for Brevard Point which said that lots at such place have to build at least an 1800 square foot house and lots that were this big had to build a 2600 square foot house. She said the utility things were all there and they assumed it was safe and there was not a problem.

Mr. Day asked Mr. Cohen would that kind of situation because it was in the covenant they have to build a certain size house based on lot size negate the contract?

Mr. Cohen stated if they had a contingency in there that they were reserving the right to build a certain thing, but they did not do that. He asked the square footage that was required in the subdivision if that was a subdivision requirement (2500 square feet)?

Ms. Iannuzzi stated it was in the covenant. She said she would guess that it was made up by the subdivision.

Mr. Cohen asked how many square feet of heated space does the subdivision requirement require?

Ms. Iannuzzi stated this was one of the smaller lots and it was 1800 square feet.

Mr. Cohen stated it seemed to him that they had too big of a house plan for this property. He said that was why he asked Staff what was the dimensions without the variance, which was approximately 35 X 40. He said it might be that they could construct a house there within the limits of what the setbacks were by having a smaller footprint and making it two story.

Mr. David Iannuzzi stated the house was only 30 X 40 with a 15 X 20 bonus room on the back which looked like a deck on the back. He said it was heated space and added on after they figured it would fit, but they could also take off the bonus room. He said excluding the bonus room the house was about 2000 square feet.

Mr. Day asked if it was two story?

Mr. Iannuzzi stated yes.

Mr. Sharpe asked how wide was the bonus room?

Mr. Iannuzzi stated the exterior was 13'-6".

Mr. Sharpe stated in theory if he took the bonus room and moved the whole house down to where the footprint of the bonus room is he would almost clear the 15 foot easement. He asked if they could reduce the footprint and still get what they wanted going vertical?

Mr. Iannuzzi stated the interior rooms were small with the current footprint. He said that was why they were adding on the bonus room to have more space for family time.

Mr. Day stated they had a situation last month where there was a differentiation between the marsh setback if there is an existing house versus a non-existing house. He asked Staff what was the differentiation on that?

Mr. Hansen stated for lots of record at the time the Environmental Overlay for the Islands was adopted if the land was vacant the setback is 25 feet, but if there was an existing house on the property the setback is 50 feet.

Mr. Iannuzzi stated there were other properties back there with the front setback variance because most of the lots were fairly small. He said when the lots were laid out they were laid out pretty bad and most everybody had to get a front yard variance.

Mr. Cohen stated they were asking for a 50 percent encroachment. He said a lot of times the Board did not have a problem with 3, 4, 5, 7 foot encroachments if there was a good reason and if it was to avoid a hardship. He said where it appeared that the design of the house is too big for the lot requiring an encroachment as large as they were requesting, which was 50 percent. He said he was concerned about that when the house could be redesign in such a way that he might come back and ask for a smaller variance. He said he might do what he said and take off the bonus room and find some way to shift the property back and then he would come to the Board asking for a smaller variance, which would be more acceptable.

Phung Nuygen (Builder) stated on the lot right here they have to stay within the setback. He said the building has to setback 30 foot. He said if they would have taken the porch out the house would be just within the area right there. He said on the lot it required an 1800 square foot heated and above in the covenant of this subdivision. He said if they took the bonus room out and moved the whole building back to the setback line right there the largest house they could construct was no more than 1200 square foot. Also, the minimum height restriction was 35 feet.

Mr. Cohen stated what if they presented the Board with an encroachment instead of 15 feet maybe 5 feet or 7 feet. He asked if he understood his comments he made earlier?

Mr. Nuygen stated yes. He said he met with the architect Wilson Roberts and in order to meet the covenant of the neighborhood and the size house to fit the lot. He said he also met with DNR and they were not giving an inch off the marsh line.

Mr. Day stated DNR does not give an inch off the DNR marsh line, but there was a 25 foot setback off the marsh the Board had responsibility for.

Mr. Cohen stated the Board could give a variance on the setback into our setback area, but not into the marsh property. He said the Board had jurisdiction in that area.

Mr. Nuygen stated he now understood.

Mr. Cohen stated the Board may be more inclined to grant a small variance instead of a huge variance.

Mr. Day stated a small variance on the setback from the front and a small variance on the marsh setback.

Mr. Cohen stated he would suggest that they go back to the drawing board and redesign something that would be less intrusive than what they had now into their setback. He said the Board had an obligation to enforce the zoning laws and they (petitioner) had a reason to come and show the Board why not.

Mr. John Winstedt (13 Shad River Road) stated he was representing several of the neighbors to discuss the ramifications to which he had a letter from them. He said they were concerned about the proposed building of this house on the lot. He said they were concerned with the setback itself. The houses along the back row of Shad River were on decent size lots and were well setback from the main road. He said they were concerned building that close to the road would make the cul-de-sac appear cluttered and crowded. He said they felt it would not only decrease the aesthetic value of this area, but the property value for those who already live there. He said they were also concern, particularly the Tillman's who live on Lot 52 as to how close the house would be to the property line. He said they also concern with the precedent that this would set in their neighborhood. He said there were several lots in Brevard Point that were not built on. He said he would suspect the reason they have not been built on was because of these very issues. He said for those reasons they were opposed to the building of this house.

Mr. Cohen stated he mentioned about the side setback and how close it was to the Tillman's property. He said there was a legal 5 foot setback from the property line. He said they were legally within their right to build within 5 feet of the property line.

Mr. Winstedt stated they understood. He said it was not the matter of law as much as a matter of the affect it was going to have on the property value for the Tillman's because it would be so close. However, as discussed earlier if there was a way to manipulate the design of the house to where it was not right up on the street at 15 feet would probably be better.

Mr. Day asked the petitioner if they would be willing to continue their petition, so they could go back and look at the design of the house in relationship to the lot. He said they could bring that back to the Board at some point in the near future.

Mr. Iannuzzi stated they would like to request a continuance.

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

RE: Other Business

Mr. Howell stated the Board needed to vote on Jim Hansen being a Secretary to the County Zoning Board of Appeals.

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve James Hansen, Secretary to the Zoning Board of Appeals. Mr. Sharpe seconded the motion and it was unanimously passed.

RE: Minutes

1. Approval of CZBA Minutes – December 21, 2004

CZBA Action: Mr. Stewart made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of December 21, 2004 as submitted. Mr. Day 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 10:00 a.m.

Respectfully submitted,

James L. Hansen,
Secretary

JLH:ca