

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

MARCH 22, 2005

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Steven Day, Acting Chairman
Robert Sharpe
Charles Stewart**

MEMBERS ABSENT:

**Davis Cohen (Excused)
Michael Lee (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. Day, Acting Chairman, stated because there were only three members in attendance, they did not have a quorum for today's meeting. He said they would not be able to vote to either approve or disapprove any petitions that were presented. He said the Board will give the petitioners the option to present whatever they would like to present today. The Board members in attendance today will give feedback and will either recommend to the full Board to either approve or disapprove petitions. He stated that if a petitioner did not want to present their petition today and in that case, they could come back and make a full presentation to the Board at the meeting on April 26, 2005 at 9:00 a.m. He said the Board apologizes for not having a quorum. He also stated the meeting was being recorded and minutes were being taken. He said the minutes will be made available to the public.

**RE: Continued Petition of William Oliver
B-05-57378-1
4 Winfield Court**

Present for the petition was William Oliver.

Mr. Howell gave the following Staff report.

The petitioner is requesting approval of a 20 foot rear yard setback variance from the 25 foot rear yard setback requirement of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct an addition onto an existing residence in an R-1 (One-Family Residential) zoning district.

Findings

1. The subject property is a standard lot measuring 75 feet wide by 115 feet deep (8,625 square feet). A single family residence and a detached garage presently exist on the lot. Both structures currently comply with zoning regulations.
2. The petitioner is seeking to construct a 10 foot by 21 foot sun room at the rear of the house and to attach the room to the garage. If constructed as proposed, the house, sun room, and garage will become one unified structure. Thus, the unified structure will encroach into the rear yard setback area.
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 this particular piece of property in question because of its size, shape, or topography.**

There are no extraordinary or exceptional conditions that relate to this property because of its size, shape, or topography. The lot is standard in all respects and its size (8,625 square feet) exceeds the minimum 6,000 square foot requirement of the district.

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

Strict application of the development standards would not render the site unbuildable and would not create an unnecessary hardship. The existing structures on the site comply with development standards and an addition could be constructed without the necessity of a variance.

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

The subject property is a standard lot. There are no peculiarities involved with 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 the Chatham County Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good. The existing garage would shield sight lines from the north. The proposed addition will not extend beyond the ends of the existing garage and will appear in the same profile when viewed from the adjoining property to the south. The rear yard (east adjoining property) is fenced by an opaque wall in excess of eight feet in height.

Summary of Findings

All of the conditions required for granting a 20 foot rear yard setback variance appear not to be met.

Mr. Oliver stated when it was originally built the garage was detached and there was a breezeway. The previous owners put a dummy wall from the garage to the house.

Mr. Day asked if it was currently attached.

Mr. Oliver stated yes.

Mr. Sharpe asked if the thing that was shown as connecting the garage and the house had a entry inside? Or was it like an 8” wall or 1 foot thick wall. He asked if it protected an area where they could step into the house?

Mr. Oliver stated this was a breezeway. He said the actual door was the house door.

Mr. Day asked if it was behind the breezeway.

Mr. Oliver stated yes.

Mr. Day stated so the breezeway was a structural wall with siding on it.

Mr. Oliver stated it was not structural.

Mr. Day asked if it had siding on it?

Mr. Oliver stated yes.

Mr. Day stated so it was attached to the house.

Mr. Sharpe asked if you could step from the garage to the house underneath a roof?

Mr. Oliver stated yes.

Mr. Stewart asked if there was doorway into the breezeway from the garage?

Mr. Oliver stated no. He said from the garage thru the breezeway it was opened. He said there was a door on the house side.

Mr. Sharpe stated so you could walk directly from the garage to the house without ever seeing the outside or being exposed to the weather. He asked if it was an enclosed walkway?

Mr. Oliver stated yes.

Mr. Day asked if there was anyone present who wanted to speak in favor or in opposition to the petition?

CZBA Recommendation: Mr. Stewart stated it would be the recommendation that the Chatham County Zoning Board of Appeals approve the petition. Mr. Day agreed with the

recommendation. Opposed to the recommendation was Mr. Sharpe. The recommendation was 2 – 1.

Mr. Sharpe stated the question that spurred his recommendation was they were asking for a variance to add a sunroom to a structure that has already been altered, which was never brought to anyone’s knowledge. He said the structure had been altered to noncompliance with the zoning laws. He said if the garage and house were not connected then the variance for the garage was moot because you could build a garage within 5 feet of the property line. But since they were connected and there was no variance asked at that time, how did they get connected. He asked if it was done without a building permit. He said all those were questions that did not originate at this level. It was a matter if they were going to comply with the zoning law or not. He said it looked to him like spot zoning because of something that has been done after-the-fact.

Mr. Stewart recommended to the petitioner that he take plenty pictures (close up) of the proposed site that showed where the accesses were. He also recommended that he stand in the yard and take pictures of the foundation that was already dug.

Mr. Sharpe stated his initial reaction to this petition was if there was enough room to get between the houses with a fire hose or other emergency services then he felt the petition was okay. He said he just wanted to make sure there was enough room on the other side of the tree because he could not see around it.

Mr. Oliver stated there was a fence that ran along here and there was the back wall fence. But there was 5 feet on each side of the garage through the fences. He said there was also a 10 foot easement or more between the two houses.

CZBA Recommendation: Mr. Sharpe stated that he agreed with the recommendation for approval. Therefore, the recommendation to the full Board will be for approval of the petition.

**RE: Petition of John H. Howkins, Jr.
B-05-33315-1
1917 Stone Street**

Present for the petition was John Howkins.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a marsh setback variance of 35 feet and a riparian buffer setback variance of 20 feet pursuant to the requirements of Section 4-12(f) of the Chatham County Zoning Ordinance in order to construct a swimming pool at an existing single family residence within an R-1-A, E-O (One Family Residential, Environmental Overlay) district.

Findings

1. The subject property, located at 1917 Stone Street, lies within the Environmental Overlay (EO) district. The Islands Community, as defined by the overlay, includes those areas of unincorporated Chatham County lying east of the Wilmington River, south of St. Augustine Creek, and west of Bull River. In addition to the development standards of the R-1-A district, the EO establishes environmental standards including a requirement for a minimum marsh setback of 50 feet and a minimum riparian buffer setback of 35

feet.

2. The subject parcel is trapezoidal in shape (frontage of 100 feet, sides of 875 and 965 feet, and rear of 105 feet) and contains approximately 1.56 acres. However, because of its marsh front location, only slightly more than 12,000 square feet of the property is buildable. An existing house that does not meet the setback requirements of the EO is located on the site. The petitioner intends to construct a swimming pool on the property, which will necessitate variances from the marsh and riparian setbacks.
3. Marsh and riparian setbacks are not necessarily measured from property lines, but rather from the marsh limit as established by the Department of Natural Resources. On the petitioner's property, the marsh limit is defined by a bulkhead located approximately 120 feet from the front property line. It is from this line that the requirements of the marsh and riparian setbacks are measured.
4. 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.**

There are no extraordinary or exceptional conditions that relate to this property because of its size, shape, or topography. Although a majority of the property (approximately 82 percent) is identified as marsh land, this is not a condition that would necessitate granting a variance to allow the property to be developed.

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

Although the identified marsh land covers a large portion of the parcel, strict enforcement of the development standards would not render the site unbuildable and would not create an unnecessary hardship.

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

The conditions described in 2. (above) are 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 the Chatham County Zoning Ordinance.**

Relief, if granted, could impair the purposes and intent of the Chatham County Zoning Ordinance. It appears that the pool could be sited elsewhere on the property and not encroach into the setbacks required by the EO district.

Summary of Findings

All of the conditions necessary for granting a marsh setback variance of 35 feet and a riparian buffer setback variance of 20 feet appear not to be met.

Mr. Day asked if there was any other place on the lot that the structure and pool could be located that would meet the requirements?

Mr. Hansen stated that Staff had been of the opinion that the pool could be located in the side yard. However, they have found out that the side yard contains the leach field for the petitioner's septic system.

Mr. John Howkins stated as mentioned it was a deep lot but because most of it was marsh, the shaded area was not really something he could do something with. Therefore, he was back to this area. He said in the staff report, the listing of the size of the lot was incorrect. He said it was about 160 feet and over 140 feet on the front. He said what he wanted to put in was a one piece fiberglass pool. He said it would be brought to the site and placed into a shallow hole. It was strong enough to sit it on the ground filled with water. He said it would be low impact. He said he needed the pool for cardiovascular exercise. He said he could not run anymore and it was also difficult for him to ride a bike. He said he felt this was a great way for him to get exercise. He further stated that he had a low tolerance for chlorine, so using a community pool was difficult for him to deal with. With a fiberglass pool, you do not have to use many chemicals because the surface was slick and algae could not adhere to it very well. He said this was the shallowest, narrowest pool he could find. He also stated that he spoke with DNR and he needed to do some work to the bulkhead. He said he needed to excavate some dirt against the bulkhead and install a cap on top of it. He said it was a simple matter that could be completed within 1½ days. He said he was certain he could do this without anything getting into the marsh.

Mr. Day asked Staff if this was an above ground pool was there a need for a zoning variance?

Mr. Sebek stated yes, because it would still be sitting on the ground so it would be taking space in that area as opposed to a raised deck or something like that.

Mr. Day asked the petitioner if he would consider doing an above ground pool?

Mr. Howkins stated he did not think it would look very good. He said he thought about extending the deck 10 feet and putting the lap pool in the deck. However, the problem with that is there is an apartment downstairs with sliding glass doors. He said he felt that it destroyed the view.

Mr. Day stated he was concerned about giving variances in relationship to the marsh. If there was a way to do this may be on the side where it would not impede the leach field or septic system keeping it above ground. He said he would be more receptive in doing that. Then there would be question regarding the sunroom. He asked if he was open to those types of suggestions?

Mr. Howkins stated he felt as an above ground pool it would be an eyesore.

Mr. Sharpe asked if he would have to empty the pool sometimes through the year?

Mr. Howkins stated he was planning on using it all-year-round. He said the pool will be heated and have a flat retractable cover.

Mr. Sharpe asked if he ever foresee a time when the pool will have to be emptied into the marsh?

Mr. Howkins stated no. He said if he needed to empty the pool, then he could pump the water into the septic system or into the front yard.

Mr. Sharpe asked if he planned on putting an apron around the pool?

Mr. Howkins stated he was planning on putting minimal amount of decking around one side of it.

Mr. Sharpe asked how deep was his excavation?

Mr. Howkins stated 4 feet.

Mr. Day asked will the sunroom be on the ground floor, second floor, or both floors?

Mr. Howkins stated it will be on the upper level.

Mr. Stewart stated he went out and looked at the site and he did not see where it would effect any of the adjoining neighbors. He said it was a very private location.

Ms. Ann Kearney stated she owned the vacant lot next to it and she had no objection to the petition.

Ms. Patty Hennessy stated she owned the property on the other side of Ms. Carney. She said she also had no objection to the petition. She said she felt the owner has really improved the property.

Ms. Mary Ann Himes stated this was not whether we liked or approved of what was being done. She said it was whether it was within the law and ordinance to do this. She said she felt it was not. Having worked five years to see a land use plan passed into law by the Metropolitan Planning Commission (MPC) and the Chatham County Commission, which said that a house of record at the time the land use plan was passed (June 2001) cannot build within 50 feet of the marsh.

Mr. Day stated the Board has come across this a couple of times and he has never really understood that. He said if there is an empty lot, a person could build within 25 feet, but if it is a house that is already there it's 50 feet. He said he felt it was kind of an oxymoron.

Ms. Himes stated she understood, but it came about because some of the developers who already owned lots and wanted to be protected from that. However, Georgia has a 25 foot marsh setback. She said if the Board allowed this, then they were breaking the law of the State. She said she lives out at the marsh and in a place she felt was too close to the marsh. She said they constantly have problems with bulkheads bulging because properties built too close too the marsh. She said you put the pressure on the ground and eventually it has to go somewhere. In regards to the sunroom, if it is on the second floor with the posts going into the ground then she did not see that as a particular problem.

CZBA Recommendation: Mr. Sharpe stated it would be his recommendation that the petition be continued, so the full Board could hear it.

Mr. Stewart stated it would be his recommendation that the Chatham County Zoning Board of Appeals approve the petition.

Mr. Day stated it would be his recommendation that the Chatham County Zoning Board of Appeals deny the petition.

Mr. Day stated to the petitioner that he was welcomed to come back to the full Board on April 26, 2005 when the petition will be heard by the full Board. He said the Board members present today will individually make their recommendation to the full Board at time.

**RE: Petition of J.A. Register, For
Tidal Construction
B-05-33466-1
114 Pinnacle Court**

Present for the petition was Scott Vaughan, Attorney.

Mr. Day asked the petitioner if they would like their petition heard today by the Board?

Mr. Vaughan stated yes.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a rear yard setback variance of eight 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 a PUD-C (Planned Unit Development –Community) district.

Findings

1. Section 4-6.1 requires a minimum 25 foot rear yard setback for a single family residence within the PUD-C 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 of a screened porch to encroach eight 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 8,408 square feet in size. Though pentagonal in shape (approximate 55 foot frontage, with sides of 101 and 109 feet and rear dimensions of approximately 84 and 29 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 3.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. The rear property line abuts a golf course, which also contains a 20 foot landscape easement.

Summary of Findings

All of the conditions required for granting an eight foot rear yard setback variance appear not to be met.

Mr. Vaughan stated lot 261 was owned by the Muses and was not one that was acquired through Tidal Construction. He said the Muses have stated that they have no objection with the setback. He further stated that it was not a sunroom, but a screened-in porch that his clients were requesting. He said Ms. Huebror (petitioner) was from Delaware and was not graced as some of us were to be born in the South and become accustomed to the bugs, which was the main reason for the screen-in-porch.

Mr. Stewart asked what were the dimensions of the screened porch?

Mr. Vaughan stated 12 X 14. He also stated as pointed out by Staff there was a 20 foot buffer on the other side outside of this particular lot line. He said they felt in reality if the petitioner has the screened-in-porch it would probably be less traffic and use of the back yard except within the screened porch area. He also stated from a line of sight that was maximizing her benefit of it. He said there was still 18'-3" to the setback. It was a very minimal amount of intrusion and it would not be heated space.

Ms. Stephanie Huebror stated the size of the porch that she was building she considered all aspects of putting it in different places to make it work and conform with the ordinance. She said the size of the porch was minimal in comparison to the benefit you get from a bigger porch. She said view was in the backyard with the golf course. However, she emphasized the porch was very small and the variance being requested was small. She said the porch would increase the value of the property.

Mr. Day asked if they could turn the sun screen to the left and put it on there?

Ms. Huebror stated she tried putting it to the left as far as they could but it still went over the property line.

Mr. Sharpe asked if alternatives have been explored to minimize the impact of an intrusion into the setback?

Ms. Huebror stated yes, and they felt there was no where else that they could put it.

CZBA Recommendation: Mr. Sharpe stated it would be his recommendation that the Chatham County Zoning Board of Appeals approve the petition. Mr. Day and Mr. Stewart agreed with the recommendation.

RE: Other Business

1. Public Notification
2. Sunset Rule on Granting Variances
3. Robert's Rules
4. Board Tenure

Mr. Day stated the only thing he wanted to talk about was at the last meeting the question came up as to whether the Chairman could vote on petitions before the Board. He said he would like to summarize the findings by Staff. Currently, the Board was operating under rules and guidelines adopted April 2000 and there was no mention or provision in the Chatham County Zoning Ordinance that makes mention of a chairperson's ability to cast a vote. However, the Board has stated that they operate under Robert's Rules of Order that says that if the presiding officers, member of the assembly, or voting body he has the same voting rights as any member. He said from his perspective every member on the Board was of the same body, therefore they would have to take a vote on whether the Chairman could do that to get it into their operating rules. He said he would be in favor of that happening.

Mr. Stewart stated he also would be in favor of it.

Mr. Day stated all other business items will be deferred until the next regularly scheduled meeting (April 26, 2005).

Mr. Sharpe stated in regard to the petition of John Howkins, B-050323-33315-1, there was a letter from Mr. Nephew K. Clark spokesman of Coastal Research, Inc. at 125 Riverside Drive that said he felt the zoning laws should be enforced.

Mr. Stewart stated he felt at the next meeting since it has come up at other meetings that hearsay evidence presented by witnesses has been handled too lightly. He said where petitioners were speaking for other people who were not present. He said he has been in court innumerable times and hearsay evidence is knock down fast, and this Board was quasi-judicial. He said he felt the Board should limit hearsay evidence to something in writing that is signed.

Mr. Howell stated he believed that the Board's rules and procedures already stated something along those lines. He said he will check it again. He also suggested that at the beginning of the meeting the Chairman state hearsay evidence is inadmissible and the Board will not hear it.

And further state that the Board will only hear people who were present and take into evidence any signed statements from other persons who were unable to attend the meeting.

Mr. Day stated he felt the Board had a responsibility as a quasi-judicial Board and public Board to notify people that there is a hearing about some particular petition. He said they do that today through the newspaper, sign, and letters to the adjoining property owners. He said he felt there are times when there are things that are going to bad for the neighborhood and the neighbors are too lazy to come and talk about it or protest. He said he felt they had a responsibility as well as the Board to come and take responsibility for their neighborhood. He said he did not feel the Board should let compassion interfere with a decision. The decision should be based upon the facts as the Board sees them on that particular day or when they visit a site. He said he also felt there were times that you have to protect people from themselves.

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 10:20 a.m.

Respectfully submitted,

Jim Hansen
Secretary

JLH/ca