

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

MARCH 16, 2005

9:00 A.M.

SPECIAL MEETING

MINUTES

MEMBERS PRESENT:

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

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 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 the following variances in order to construct a single family residence in an R-1 (One-Family Residential) zoning district and within an EO (Environmental Overlay) district: 1) a 7½ foot reduction of the 25 foot marsh setback required by Section 4-12 of the Chatham County Zoning Ordinance; and, 2) a 7½ foot front yard setback variance from the 30 foot front yard setback requirement of Section 4-6.1 of the Chatham County Zoning Ordinance.

Findings

1. Section 4-6.1 requires a minimum 30 foot front yard setback for residential uses within the R-1 district. Section 4-12 requires a minimum 25 foot setback from a designated marsh.

2. The subject parcel is currently vacant. Construction of a single family residence is proposed. The petitioner seeks variances that would allow construction to encroach 7 ½ feet into both the required front yard setback and the required marsh 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 irregularly 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 (Environmental Overlay) requires a 25 foot setback from the marsh line identified by DNR. This requirement 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. Because of the irregular shape of the lot and the marsh setback requirement, any structure proposed would be severely limited in size and placement 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 appear to have been built with front yard setbacks less than mandated by the Zoning Ordinance. 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 7½ foot front yard setback variance and a 7½ foot marsh setback variance appear to be met.

Mr. Iannuzzi stated it was hard to come up with a house with the existing setbacks. He said he felt there were not too many options that you could do with this lot.

Mr. Watford stated the previous plans really encroached on the front setback as well as virtually being in the neighbor's backyard.

Mr. Iannuzzi stated the neighbor attended the last meeting. Since then, he has talked with the neighbor and showed him the revised plans and he did not have a problem with the new design.

Mr. Stewart asked if the square footage of the footprint basically the same as the square footage of the original plans?

Mr. Iannuzzi stated yes. In addition, it was a 1½ story home as opposed to 2 story as previously proposed.

Mr. Cohen asked if he talked with his neighbor Mr. Westerfield since the last meeting?

Mr. Iannuzzi stated yes. He said they talked February 22, 2005 at which time he showed him the revised plans and he said he did not have an objection.

Mr. Day stated looking at the design and what the petitioner was asking for in relationship to what they had last time, from his perspective this was a better design. He said he felt the compromise was significantly better.

Mr. Stewart stated as he said last meeting and in looking at the lot again he still felt it was a substandard lot. He said he felt they were building on high marsh land and practically at the point of intruding upon marsh land. He said although he made a good effort he felt the plans were still grossly intruding upon the setback. He said he felt that they were trying to over improve the lot. He said he still felt the house was too big for the lot.

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals approve the amended petition. Mr. Sharpe seconded the motion and it was passed 4 - 1. Opposed to the motion was Mr. Stewart.

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

No one was present for the petition.

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. Cohen asked if the difference of being attached and detached made a difference in the amount of setback required?

Mr. Hansen stated yes. He said the way the code was prepared and interpreted was if you have a primary structure it was required to have minimum setbacks (front yard and side yard). The detached structure (garage) also has required setbacks. He said for the detached structure, the secondary structure, the rear yard setback was only 5 feet. He said in this case today, they were appropriately legal as they sit today. He said that is the garage is 5 feet from the side and 5 feet from the rear. But with the proposed addition of the sunroom which they proposed to attach to the house and to the garage for code purposes this now all became one structure.

Mr. Cohen asked if it were not attached to the house but attached to the garage would that give it a 5 foot setback?

Mr. Hansen stated yes. He said the only thing they would have to be concerned with then was there were building code requirements that required certain distance separations between structures. He said as it was proposed (attached) it becomes one single structure.

Mr. Cohen asked if he knew the distance between the house and sunroom would have to be under the building code?

Mr. Hansen stated it depended upon what the petitioner wanted to do. He said if they were willing, for instance, to build a firewall you could be closer than if you did not wish to build a firewall. However, minimally they would have to be at least 3 feet a part.

Mr. Day asked if he knew if the petitioner was going to use the garage as a part of a living space?

Mr. Hansen stated he did not know.

Mr. Stewart stated he was under the impression that the garage and building were already attached.

Mr. Hansen stated he believed they were. He said the question before the Board was that they do not.

Mr. Cohen asked if the sunroom was built?

Mr. Hansen stated yes, there was a physical attachment between the house and garage.

Mr. Stewart asked if it was a breezeway?

Mr. Hansen stated that would need to be addressed by the petitioner because he has not been in the backyard to affirm that it is or is not.

Mr. Howell stated when he went out to look at the property he walked up the back fence to see where they had the footprint marked for the sunroom. He said he knew he looked at whether it was connected or not.

Mr. Cohen asked if there was a reason that the petitioner (Mr. Oliver) a was not here?

Mr. Howell stated at the February meeting the Board announced that there would be a special meeting. The people in attendance were asked to sign in as well as to leave a contact number. He said those individuals were notified of the special meeting. Although a direct conversation was not held with Mr. Oliver a message was left for him in regards to the meeting.

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

The motion failed for lack of a second.

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

Mr. Lee stated he felt the petitioner should at least have the opportunity to present his petition because there were a number of questions raised by the Board that could not be answered.

Mr. Day withdrew his second to the motion.

Mr. Howell stated Staff could spend some time on the computer and look at aerials of the property. He said they could then make a determination about whether or not it was connected based on the picture of the aerial.

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals continue the petition until the next meeting which is March 22 or the April meeting and that the petitioner is sent a registered letter stating that the petition will be reheard at that time. Mr. Sharpe seconded the motion and it was unanimously passed.**

RE: Minutes

1. Approval of CZBA Minutes – January 25, 2005

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of January 25, 2005 as submitted. Mr. Cohen seconded the motion and it was unanimously passed.**

RE: Other Business

1. Petition of Lynda S. and Gilbert H. Werntz, Jr.
B-010102-35024-1
425 Suncrest Blvd.

Mr. Howell stated there was no information that was presented. He said this was a request as noted by the County Attorney that the Board consider whether to rehear a petition. The decision today will be whether to rehear it or not. He said if the Board says “no” then it was over with.

But if the Board says “yes” then the Staff will go through the process which would also include advertisement. He said it would then be heard at next month’s meeting.

He further provided the Board with background information. He said a piece of property was proposed to be subdivided recently. And it was asked of Staff that “didn’t this property go to the Board of Appeals and what is the current status.” He said he gave the planner the status, which was currently a denial. But the history of it was that in November 2000 the petitioners applied to this Board for a lot width variance to create two lots. At the meeting of January 2001 the variance was approved by the Board. As part of the approval which is signed by the Secretary and Chairman there was a template on the computer (right or wrong) that contained the words “this decision and any approvals related thereto will expire on January 2002”, which gave a one year time limit for every petition. However, this is not done now. It further says “unless a building permit is obtained prior to said expiration date. This decision is limited to the development plan submitted and reviewed by the County Board of Appeals.” He stated there were a couple of things you could say on subdividing land and getting a building permit, which does not make sense. The intent could be that if the petitioner applied, once it was approved, they have a year to apply for their subdivision. He said in this case it was not done within a year. Even though time limits are not in the Ordinance, other than 6 months for a building permit, it was the legal opinion that the Board can set time limits for variances. Variances universally in this country normally run with property. But that again was from other opinions that once it has been instituted on your property that it stays with the property. However, opinions were that you could impose a time limit in order to institute a variance. The reason being was if it was not done in a timely manner, property and owners change around a property which the new people did not have a chance to make a comment about the variance. He said the Board did not say or never has said in their resolution for denial or approval that this petition has a 1-year time limit. He said it was always in the decision from the template and only the Chairman and Secretary see it.

The variance was approved in January 2001. The approval expired in January 2002. In January 2002 the petitioner requested a time extension. In February 2002 the Board denied the time extension. In July 2002, the petitioners were sent a letter prepared by the Secretary of Board Appeals at that time in concert with the Zoning Administrator at that time and possibly the Executive Director that the decision to deny the time extension was issued in error and they stated that the Zoning Ordinance did not require time limit extension for the variance to remain in effect, which goes back to what he previously said. Currently, the petitioners are trying to sell their property and Staff will not review a subdivision because as it stands now, the variance to allow a subdivision was denied. However, the decision to deny, also had a 1-year time extension.

Mr. Howell further stated that all this information was sent to the County Attorney. The County Attorney suggested that the Board consider whether or not to rehear the petition, which would be a new petition. However, there would not be any fees that the petitioner would incur.

Mr. Stewart asked if the conditions changed to justify a rehearing or was it still the same?

Mr. Howell stated he did not know.

Mr. Stewart stated if a neighborhood was not in transition going into smaller lots, why should the Board hear it because nothing has changed.

Mr. Lee stated the Board approved it January 2001. The petitioner came back for a time extension January 2002, which the Board denied February 2002. But the petitioner received a letter that said the January 2001 approval never expired, so the denial in February 2002 was moot. He asked if that was correct?

Mr. Howell stated yes.

Mr. Lee stated if he was the petitioner of this property and in possession of that letter he would say he could subdivide his property now.

Mr. Howell stated they could talk about the weight of the letter and who the letter was signed by, but that person nor the MPC Staff did not have authority to overrule the Board of Appeals.

Mr. Cohen asked what was the affect of the Board granting the petition? He asked if that meant that they come back and reapply for the subdividing?

Mr. Howell stated yes.

Mr. Cohen stated the petitioner does not have to pay another filing fee?

Mr. Howell stated that was what he was instructed.

Mr. Cohen stated the petitioner paid one filing fee in 2001?

Mr. Howell stated yes.

Mr. Cohen stated the whole issue was that they just get another hearing without having to pay another filing fee, which they have already paid one time.

Mr. Howell stated yes. He said he understood Mr. Stewart's concerns but he did not want to get into the details of what the petition involved. He said he felt the Board needed to decide on the sequence of events and the correspondence that has been passed along whether they deem it prudent or fair to say yes or no.

Mr. Day asked who took the statement off the template that was now gone?

Mr. Howell stated he did. He said the statement had been on there forever.

Mr. Day asked if it was legal.

Mr. Howell stated the City of Savannah had a 1-year limit on Board of Appeals decisions. He said he felt the template was carried over to the County Board of Appeals template for the staff reports and decisions. He said the staff report basically was a cut-and-paste to the decision. In addition, the County Ordinance specifically says a petition has 6 months.

Mr. Cohen stated he felt that at another time the Board needed to discuss the Board's granting of variances that people do not act on.

Mr. Howell stated he did not know what the petitioner was going to say. He said he would like the Board to know that none of the property owners have been notified of this petition. He said what was going to be said by the petitioner would be from one side of this issue.

Mr. Tim Walmsley (Attorney for Werntz's) stated he understood that the Board was looking at reconsidering a decision of denial and having another hearing for what sounds like a new variance. He said their position was a little different and he will walk through the facts as they see them. In January 2001, the original variance was granted for a piece of property in the County. He said that variance had in it the language that said the variance was only valid for a year. That language was appropriate under the City's code. There was absolutely no limitation on a variance under the County Ordinance. He said what ended up happening was that language got stuck in there and there was no discussion. He said as he understands it, at the Board back in January 2001 about limiting the property owner's right under this variance. He said what the property owner did as the year deadline was approaching, they decided in order to cover themselves they would send a letter out. January 20, 2002, the petitioner asked for an extension. He said that triggered this Board into a decision which was issued in February 2002 denying that extension based upon the language that existed from the previous variance. In July 2002, Mr. Hutton on MPC letterhead sent a letter to the petitioner essentially saying this decision that we made in 2002 was not a proper decision, which they assumed was because the County Ordinance does not restrict time limit on a variance. He said at that point it was their client's understanding that essentially the original variance was still in place. He said they were here today, to get some understanding on where they were. He said their position was that the original variance is still valid. There was no time limitation under the County Ordinance. He said this Board did not vote to decide to put a time limitation. It was instead inserted in under the City of Savannah's code. He said it was a strange set of facts, but in their opinion, the 12 month limitation simply would not apply. It was not something that this Board decided to do. He said this Board did not decide to apply it to a piece of property in the County.

He further stated their argument was essentially that the original variance was still in place. He said he felt this Board needed to make a decision at some point on how it was going to move forward with this. He said he understood that this was a decision to come in and ask them to repetition. However, their position will is they could submit the same information essentially they submitted in 2001. But on top of that they believed legally they have a right which runs with the property, which began in 2001 and needed to be addressed at some point. He said he understood what the Board was saying today and he also did not want to argue the merits of the petition, but there were some legal questions they needed to work through. Again, it is their feeling that this variance is in place and their property owner has a right to move forward.

Mr. Day asked if he was saying that the Board should not vote to rehear the petition because they believed that the problem lies with the interpretation of the MPC in relationship to the letter that was submitted? He said he felt what he was saying to the Board was to deny hearing the petition and let them work it out legally. He asked was he asking for the Board to accept or deny it. Or was he saying that the problem needed to be worked out with the MPC and the Board not do anything.

Mr. Walmsley stated the issue that he understood on the Board's agenda today was to decide whether or not to give them a right to re-petition. He said at this point, if it was the Board's understanding that there was no variance out there they do have a right to come in and re-petition under the code because it has been more than 12 months since the last petition. He said there has been some discussion about technically that they could come in and re-petition which the Board was talking about was waving a filing fee. He said they felt the issue went further than that. What the Board may want to consider, which was up to them and the County Attorney was what in fact was the status of the original variance and was in fact the Board's denial in 2002 an appropriate action. If it was not, then the original variance stays in place. If

this Board recognized that it says the original variance was still in place and then there was no need to re-petition.

Mr. Day stated may be what the Board needed to do was table the action and say you folks work out with the County Attorney and the MPC on whether the MPC will review their petition for a subdivision.

Mr. Cohen stated he felt that issue was not even before the Board today. He said what was before the Board was whether to grant the petition which allowed them to come back and reapply for the variance.

Mr. Day stated he did not have a problem with that. He said originally, the petition was approved and the MPC was in error by having this statement in that document and should have never gone to this Board the second time. He said he felt the Board should not have had the opportunity to deny it.

Mr. Lee asked has the petitioner applied for a building permit?

Mr. Howell stated they have applied to subdivide the property and Staff will not do it based on the history of it.

Mr. Sharpe suggested that it comes in the package so that petitioner could come before the Board and present everything they have to the Board. He said he felt in this way the Board would have a clear picture as to what was going on.

Mr. Cohen stated they have a petition before the Board today to allow them to come back and waive the filing fee, which they have already paid one time. He said that's what before the Board. He said all the other things were asides right now. The issue was, should they allow them to do it or should they not allow them to do it.

Mr. Stewart stated his interpretation was initially they came in with their petition requesting to subdivide the land, which the Board said yes. He said then they submitted another petition which in effect validated the first petition because now they wanted permission to develop it. Therefore, when they did that with their own initiative, they cancelled out the original petition and when it came to the Board they denied it. He said he felt the only thing on the table now was the denial.

Mr. Day stated they did not petition to develop. He said what they did was petition to extend the first petition. He said his point was it appeared that they should never have had to come before the Board because the Board did not put a time limit at the first approval. It was simply a statement on a document.

Mr. Stewart stated he understood, but the action for the extension he felt superceded the original.

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals approve the petition to be reheard at the next regularly scheduled meeting with the understanding the filing fee be waived. Mr. Lee seconded the motion and it was unanimously passed.

Mr. Howell stated the Board had the authority that if they approved a variance to put any condition on it that they wanted to, which they have done in the past. The template of the time extension would be a condition and the Board had authority to do that. He said right or wrong, the template also has a time limit on its decision, so the denial expired. He also said if the Board remembered the Zoning Ordinance required every decision to be made by resolution. He said he felt the Board was lacking in their verbalization of their resolutions of denial or approval because Staff has to put the Board's intent into the decision.

Mr. Cohen suggested at the next meeting for the Board to think of a time limit that they could put on each granting of a variance that it be acted upon otherwise it expires after a certain period of time. He said some projects may require more time and some less time. He said he felt this was something the Board could add on to decisions made by the Board.

Mr. Lee stated he felt it could be done on each individual case. However, he did not feel the Board had the authority to change the code for the County.

Mr. Day stated because the code says 6 months.

Mr. Sebek stated it says 6 months on building permits, but it goes with the property for other issues. He said that did not mean the Board could not set a limit, but they would choose to do it on an individual case. He said as a rule, he felt the Board would have to have it changed by County Commission.

Mr. Day stated he just went through the building permit process with the City and it took over a year. He said it was not an easy process, so the Board would need to review it on a case-by-case basis.

Mr. Howell stated the language on a building permit could also be interpreted as the process of applying or trying to acquire a building permit, which could take a year to actually get the building permit. He said it has been interpreted that once you start the process then that meets the intent of what the ordinance says.

Mr. Stewart stated he understood that this Board was the only one where the Chairman could not vote.

Mr. Howell stated the Chairman can vote.

Mr. Cohen stated it was his understanding the Chairman can vote to break a tie.

Mr. Day stated his interpretation was that the Chairman could vote on every petition. He said maybe the Board needed some clarification.

Mr. Howell stated the Board has adopted Robert's Rules of Order on conducting a meeting. But the Board could set their rules and procedures and change it when they wanted to.

Mr. Day suggested that Staff look up the information in regard to the Chairman voting and come back with a written clarification next month.

Mr. Cohen stated he would also like the Board to address at the next meeting the Sunset rule on granting petitions.

Mr. Howell stated Staff was trying to move the cut-off-date for petitioners in order to give Staff some breathing room. He said Staff has time constraints, especially with the City of Savannah, in that the City has changed their notification procedures for the newspaper from 5 days to 15 days, which gives Staff 1 day to look at the petition, write the legal notices, and send them out.

Mr. Day stated he would also like to discuss at the next Board meeting Board tenure because half of the Board's tenure was out-of-date. He said he felt the County Commission needed to come forth and vote to reappoint the Board members whose terms were out-of-date. He said he knows the language says "until reappointed or relieved" but he felt that needed to happen.

Mr. Cohen stated maybe the Commission will do a blanket decision to reappoint the members.

RE: Adjournment

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

Respectfully submitted,

John Howell,
Secretary

JH:ca