

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

APRIL 26, 2005

9:00 A.M.

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 April 26, 2005 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

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

No one was present for the petition.

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 will 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. Howell further stated at the last meeting the petitioner was not present. He said the Board asked Staff to notify the petitioner via certified mail. He said after the meeting was over, the petitioner came by the office, but for business reasons was not able to attend the meeting. Instead of sending the petitioner a letter by certified mail, he had the petitioner to sign the notice

that was typed up stating the petition will be heard at the March 22, 2005 meeting, which was postponed. However, the petitioner signed the notice at MPC office on March 16, 2005.

Mr. Sebek stated that he also talked to the petitioner on last Friday and he was aware of the meeting.

Mr. Cohen asked that the petition be moved to the end of meeting to allow time for the petitioner to arrive.

CZBA Action: Mr. Stewart made a motion that the Chatham County Zoning Board of Appeals move the petition to the end of the agenda. Mr. Cohen seconded the motion and it was unanimously passed.

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

Present for the petition was John Howkins, Jr.

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 (E-O) 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 E-O 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 E-O 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. Sharpe asked what type of material was the bulkhead made out of?

Mr. Howkins stated he was not sure, but he believed it was a form of plastic. He said it looked like it has tongue-n-groove joints where it was driven into the marsh.

Mr. Sharpe asked if it was coated sheet piling?

Mr. Howkins stated may be.

Mr. Sharpe asked if the bulkhead would be able to bear 5 tons of pressure?

Mr. Howkins stated yes, the tieback system was very stout. He said most of the dirt that would be excavated for the pool was probably filled from when the bulkhead was built. He said he felt the majority of the weight of the pool would be far up hill and it would be on original grade.

Mr. Sharpe stated the reason he asked that question was because soiled sheers at a 45 degree angle when you put pressure on the bulkhead, he wanted to make sure that the bulkhead would hold the sheer pressure as it reached the bulkhead from the weighted pool.

Mr. Howkins stated he felt it would because he also spoke to the manufacturers of the bulkhead and they said since he was going so far up hill there really was not anything to consider about it. Again, the closest corner of the pool was 16 or 17 feet away from the bulkhead. The hole on that side would only be about 3 or 3½ feet deep.

Mr. Watford asked how old was the house?

Mr. Howkins stated it was built around 1990.

Mr. Watford asked how far was the house from the marsh?

Mr. Howkins stated he believed the closest corner was approximately 35 feet.

Mr. Cohen asked how wide was the pool?

Mr. Howkins stated 8'-6".

Mr. Cohen stated his concern was that the run-off from the pool will damage the marsh and the environment in front of the house.

Mr. Howkins stated there would never be a reason to empty the pool. He said it was a fiberglass pool and did not require much chemical because the fiberglass was very slick and algae has a hard time adhering to it. He said it was a small pool and would be 4 feet deep. He said he felt bearing a really severe storm there would never be a reason to empty the pool. He said if the pool had to be emptied there were other places you could put the water.

Mr. Cohen asked if there was a way to move the pool closer to the house?

Mr. Howkins stated he was 2 feet off the steps. He said if he had to, he could move the steps approximately 4 feet. He said the drawback would be was that he was not planning to do any kind of decking along here. However, if it made a difference to the Board then he could slide it up.

Mr. Day stated he felt the problem with moving the pool up 3 or 4 feet would be that the petitioner may undermine the footings on the posts that was holding up his deck.

Mr. Lee asked the petitioner why he couldn't move the pool more towards the front of the lot?

Mr. Howkins stated that was the entrance to his garage. Also, he felt that was not a great place for it because you would not catch any sun, as well as it would get a lot of debris in the pool and be very close to the road.

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

Mr. Cohen stated Mr. Day mentioned that he felt if he moved the pool closer to the house that it may undermine the footings.

Mr. Hawkins stated he was told that the pilings that the house was built on were driven deep.

Mr. Day stated he felt you would not know for sure until you looked at drawings.

Mr. Hawkins stated the pool also could be set on top of a deck without a variance, but his neighbors did not want him to do that. He said he also had a letter his neighbors signed saying they rather that he do the pool in the ground as opposed to sitting it on top of a deck.

Mr. Stewart stated something that has not come up at this meeting, but came up at last meeting was that the pool was a modular unit that was placed on site, but it could also be removed the same way.

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

Ms. Mary Ann Himes stated she was at the meeting last month and it was her understanding that Mr. Hawkins was possibly going to have some changes this time. She said she did not see any changes from what was presented last month and today. She said her concern was the plan says you cannot do this because of the Island Land Use Plan. She said the petitioner was seeking variances against the marsh and riparian buffers. She also stated there was an article in Sunday's paper in regard to building on the marsh and one of the don'ts listed in the article was swimming pool and one of the do's was landscaping. She said she felt this would be against the land use plan.

Mr. Cohen asked where did she live in relation to the petitioner?

Ms. Himes stated she did not live near the petitioner, but is a resident of Whitemarsh Island. She said she was not speaking as a neighbor, but as someone who has worked on zoning, land use plan, and the Islands Land Use Plan.

Mr. Cohen asked if her concern was the marsh?

Ms. Himes stated yes.

Mr. Stewart asked the petitioner if he had an engineer study done of the impact of the weight of the pool against the bulkhead.

Mr. Hawkins stated no. He said he had two pool guys to come out and look and they felt that there would not be a problem.

Mr. Cohen stated he would like to make a comment on the motion that was on the table. He said if the Board denies the motion that was on the table he had an alternative motion, which was to grant the petition based on medical hardship. He said he was also concerned about the marsh, but he would also ask that the motion for approval be with the proviso that the swimming pool be moved a minimum of 3 feet or 4 feet back toward to the house.

Mr. Stewart stated he would also like to see added that an engineering study be done as to the impact that the swimming pool will have on the bulkhead.

Mr. Sharpe stated one gallon of water weighs approximately 8.35 lbs. The pool is approximately 1,280 cubic feet. He said that will be a lot of pounds of water bearing on the bulkhead. He said he agreed with Mr. Stewart that may be the petitioner needed to have an engineering study completed before the Board approved any thing.

Mr. Howkins asked if he got an engineering firm to sign off on what he proposed and furnished it to Mr. Sebek could he proceed?

Mr. Sharpe stated it would be better if the petition could be deferred, so the Board could also review the engineering report.

Mr. Cohen stated there was a motion for denial pending on the table.

Mr. Lee withdrew the motion for denial.

CZBA Action: **Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals continue the petition until the next regularly scheduled meeting to allow the petitioner an opportunity to research and provide to the Board a copy of the findings. Mr. Day seconded the motion and it was unanimously passed.**

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

Present for the petition was William Oliver.

Mr. Oliver showed photographs as requested from last meeting.

Mr. Cohen asked Staff if he could explain the difference between the setbacks if it is attached or detached?

Mr. Howell stated there was no setbacks between the property line. He said if you have a detached structure, which is an accessory building or garage then there is a 5 foot setback from all property lines. If you have a principle building (house) then it is a 25 foot rear yard setback and 5 feet on the side yard.

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

No one came forward.

Mr. Stewart stated from looking at the site he felt that you would not be able to see the addition.

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

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

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. Day stated the Board heard a petition very similar to this in basically the same area.

Mr. Hansen stated next door.

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

No one came forward.

CZBA Action: **Mr. Day** 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. Lee** seconded the motion and it was passed 4 - 1. Opposed to the petition was **Mr. Sharpe**.

**RE: Petition of John & Sheila Ortman
B-05-56141-1
104 Quarterman Drive**

Present for the petition was Sheila Ortman.

Mr. Hansen gave the following Staff report.

The petitioner is requesting a front yard setback variance of four feet and a side 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 attached garage in a R-1 (One-Family Residential) zoning district.

Findings

1. Section 4-6.1 requires a minimum 25 foot front yard setback and a minimum seven foot side yard setback (due to lack of a public sewer system) for residential use within the R-1 district.
2. The subject property is located at the southeast corner of Tropical Way and Quarterman Drive. The parcel contains approximately 12,950 square feet, with frontages of approximately 109 feet on Quarterman Drive and approximately 84 feet on Tropical Way. There are no irregular topographic features located on the site. A one-story single family residence is presently located on the site. The petitioner proposes to construct an attached garage with access from Tropical Way.
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.**

There are no extraordinary or exceptional conditions that relate to this property because of its size, shape, or topography.

- 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 cause an unnecessary hardship. The proposed addition could be “scaled back” to fit within the standards of the Ordinance. Moreover, it appears that a former garage was enclosed as living space in the past.

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

The conditions described in 2. (above) are not 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, would not cause substantial detriment to the public good.

Summary of Findings

All of the conditions required for granting a four foot front yard setback variance and a three foot side yard setback variance appear not to be met.

Ms. Ortman stated when she moved into the house everything was as it was. She said she believed the previous owner prior to whom they bought the house from was Alonzo Adams who was a lawyer. She said she also believed that it was a car garage at one time, but the way he enclosed it, made for office space. She said one of the reasons they were looking at a garage on that side was because the driveway that comes into the house on that side they have had several mishaps in cars running into her yard and hitting her cars as well as other property damage. She said she has been talking to the County to see what they can do with the corner. She also had a letter signed by her surrounding property owners saying they were okay with her petition.

Mr. Sharpe asked if there was a privacy fence on the back side of the property?

Ms. Ortman stated yes.

Mr. Sharpe asked how far was it from her privacy fence to the neighbor's?

Ms. Ortman stated it would approximately be the same distance of where they were looking to put the garage. She said about 5 feet.

Mr. Sharpe stated if she put her garage up there and have a 4 foot easement between the garage wall and privacy fence there may be another 5 feet from the privacy fence to the next structure.

Ms. Ortman stated yes.

Mr. Cohen asked why she couldn't park her car on the concrete pad?

Ms. Ortman stated that was where all her vehicles have been hit.

Mr. Sharpe asked if she could reconfigure her proposed garage so that there would be a little more room between the fence and adjacent wall of her garage so emergency personnel would be able to get through if they needed?

Ms. Ortman stated her privacy fence only came down to this area and the rest was open area between her neighbor.

Mr. Stewart asked in addition to using the garage for shelter what else would it be used for?

Ms. Ortman stated her vehicle. She restated that she had a signed letter from her neighbors saying they were okay with what she was proposing.

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

No one came forward.

Mr. Stewart asked if she considered a carport?

Ms. Ortman stated they were not sure if they wanted to do a carport or a garage.

Mr. Stewart stated the reason he asked was in regard to Mr. Sharpe's question about emergency personnel being able to get in and out. He said with a carport, emergency personnel will be able to go right through.

CZBA Action: Mr. Lee made a motion that the Chatham County Zoning Board of Appeals approve the petition. Mr. Cohen seconded the motion. The motion failed 1 – 4. In favor of the motion was Mr. Lee. Opposed to the motion were Mr. Cohen, Mr. Day, Mr. Sharpe, and Mr. Stewart.

RE: Petition of Harold Yellin, Agent for
Burke Wall
B-05-56605-1
6917 Johnny Mercer

Present for the petition was Harold Yellin, Attorney.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a change to a non-conforming use pursuant to the requirements of Section 8-4 of the Chatham County Zoning Ordinance.

Findings

1. The petitioner desires to establish a non-conforming truck rental facility on a site located at 6917 Johnny Mercer Boulevard. The site is presently occupied by a concrete contracting business. Boats and trailers, unrelated to the business operation, are also stored on the site.
2. In accordance with Section 8-4 of the Chatham County Zoning Ordinance a non-conforming use shall be permitted to change to another non-conforming use under certain specified conditions including:

- a. **A change from one non-conforming use to another non-conforming use shall be permitted only within R and I-P districts.**

The subject property is located within an R-2-A (Two-Family Residential Limited) district.

- b. **A change from one non-conforming use to another non-conforming use shall be permitted only in the case of non-conforming use of buildings.**

The petitioner intends to establish a truck rental facility on the site. Although the office portion of the use will be contained within the existing building, the parking and storage of vehicles will be an outside use.

- c. **A change from one non-conforming use to another non-conforming use shall not be permitted in the case of a non-conforming use, which is primarily a use of open land.**

A truck rental facility is the intended use. Thus, parking and storage of trucks will occur on open land.

- d. **A change in the non-conforming use of a building shall only be permitted when the building in which the change in non-conforming use proposed is one, which was specifically designed for use as a commercial building.**

The building that presently exists on the site was designed specifically for commercial use and was built prior to adoption of the Chatham County Zoning Ordinance in 1962.

- e. **A non-conforming use shall only be changed to one of the following specifically listed uses:**

1. **Food drug stores**
2. **Personal service shops: barbershops, beauty shops, shoe repair, dry cleaning and laundry pick-up stations, Laundromats, and watch**

- repair.
3. **Clothing stores and dry goods**
 4. **Home furnishings and hardware**
 5. **Specialty shops: gift shops, florist shops, jewelry shops, hobby shops, camera shops, book stores, stationery stores.**
 6. **Offices: professional offices, real estate offices, financial agencies, insurance offices, sales offices; provided, there shall be not sale or display of equipment on the premises unless otherwise permitted in this Section.**
 7. **Contracting and repair services: cabinet shop, electrical contracting, plumbing contracting, mechanical systems contracting, and small equipment repair. Provided, there shall be no exterior storage, the activity is carried on wholly within the enclosed building, and the use does not produce noise in violation of the standards or characteristics set forth in the Chatham County Noise Ordinance as incorporated herein by reference.**
 8. **Commercial school provided there are three instructors or less employed by the school**
 9. **Printing and letter shops**
 10. **Pet supply and grooming business**

A truck rental facility is not among the listed permitted uses allowed to change from one non-conforming use to another non-conforming use. Moreover, the above list clearly indicates that the business of non-conforming uses, if permitted, is to be conducted inside and that outside storage is not allowed.

- f. Nothing in this Section shall prevent a non-conforming use from being replaced by an identical non-conforming use.**

The petitioner's stated intent is to replace a concrete contracting business with a truck rental facility.

- g. A change from one non-conforming use to another shall be subject to the limitations set forth in Sections 8-2 and 8-3 of this Section.**

The limitations of Sections 8-2 and 8-3 relating to the legal establishment of the non-conformity have been applied.

- h. A change from one non-conforming use to another non-conforming use shall be permitted only with the approval of the Zoning Board of Appeals upon a finding that:**

1. *The requested use will not generate more vehicular or pedestrian traffic than the existing or last permitted use.*

The subject property is presently used by a concrete contractor. The amount of traffic (vehicular or pedestrian) presently generated by said use is unknown. It can be reasonably assumed that a truck rental facility will generate more vehicular traffic, thus having a greater negative impact on the surrounding residential neighborhood.

2. *The requested use will not constitute a greater negative visual impact on the surrounding area than the existing or last permitted non-conforming use.*

The proposed use is not likely to create a greater visual impact than that that currently exists. However, it should be noted that the legality of the existing storage of boats and trailers is in question.

3. *The requested use will generate no greater noise than generated by the existing or last permitted non-conforming use.*

The extent to which the current use generates noise is unknown. It is likely that the proposed truck rental facility will generate an increased level of noise due to an anticipated increase in traffic and site activity.

4. *The layout and operating characteristics, in addition to the above listed criteria, will be of such design as to minimize the impact of the requested use on surrounding uses.*

A site plan was not submitted with the petition nor is the operating characteristics known.

Summary of Findings

The conditions necessary for granting a change to a non-conforming use appear not to be met.

Mr. Lee asked if there was a fence screening off of Johnny Mercer?

Mr. Hansen stated yes, but you could still see the boats and trailers. He also stated that the property was zoned for residential use, but it has also been a legally nonconforming commercial use prior to the adoption of the ordinance in 1962. He said the area behind the property was vacant and was in fact used in part as a recreational facility. The other uses on the other sides appeared to be all residential in nature and were residentially zoned.

*Mr. Lee left approximately 10:25 a.m.

Mr. Stewart stated that several of the residences were at one time occupied by offices such as real estate or insurance offices.

Mr. Hansen stated the question that was before the Board was to change the nonconforming use from one to another, which was allowed under the Chatham County Zoning Ordinance. However, as detailed in the Staff report it was explicit as to what the uses can be and how they can be changed. A truck rental facility was not something Staff felt was appropriate

Mr. Yellin stated the petition before the Board was not for a variance request. He said the petitioner wanted to change an existing nonconforming use to another nonconforming use. He said prior to 1985 this site was Thompson Sanitation. It has also been a maintenance facility for a refuse collection and he believed they had the Wilmington Island and Tybee routes. In May 1985, Superior Sanitation purchased this site and took over the Wilmington Island routes. He said at that time there were as many as 10 to 15 garbage trucks parked at this site. He said after it had stopped being used as a transfer station this was where containers were stored. In

1987, John Clements Construction, Co., was there and building supplies were located on site. In 1988, Nelson Courier Service was there and 2 to 3 vans were parked on site. In 1989, Harbor Construction was there for about six years and supplies were located on site. In 1995, Memorial Medical Center had EMS service at this site. He said after Memorial Medical Center's EMS service it became Sea Tow and boats were stored and repaired at this location. He said in regard to Mr. Hansen's question Sea Tow was sold, but through permission of the current tenant, the boats were allowed to be stored there and it was now a concrete business. He said they thought continuing the business use here made sense. He said the house that was next to them was a mobile home and the zoning district was PDN which is a nonconforming district. He said there was a good vegetative buffer and you could just barely see the outline of boats from the photographs.

He further stated as you looked the other direction the substation was directly next door to them. He said if you looked at what was going to go at this site he felt the Board needed to consider what use was willing to go next door to this. He said next door not only did you have the substation use, but also there cars and trucks were also parked back there without any buffer. He said the cyclone fence was the buffer between them.

Mr. Day asked was he talking about small trucks or semi-tractors, when he mentioned truck rental?

Mr. Yellin stated the smaller u-haul type trucks. He said there would be at least 4 or 5.

Mr. Day asked if they would be boxed trucks?

Mr. Yellin stated some big ones and some small ones, but there would be fewer of these trucks than there were boats on site. He said there would also be fewer of these than when Superior Sanitation had there 10 to 15 trucks back in the 1980's. He said in the back of the property there were three garage doors. The property had a huge yard and he felt the trucks could park without being seen from the street. He said this property has always been a commercial piece of property despite the R2-A which was somehow tagged along. He said when Mr. Wall told him what the use was going to be they had two choices. He said they could come in and rezone the property, which would have left them in a curious situation of having to come in and only rezone that one piece. He said it has been done before and as the Board could see that zoning was different from the rest. However, they felt rather than rezoning this to a zoning district that might also allow unintended uses like bars and restaurants that they were better off coming before the Board under the ordinance and saying nonconforming before and nonconforming now.

He further stated they had had a slight different reading of the ordinance than staff. He said it talked about offices including sales offices; and "provided there shall not be sale or display of equipment on the premises unless otherwise permitted in this section." He said he read that to mean that part of your sales offices could have equipment sales. For example, when the City of Savannah was looking at what to do with the piece of property across from Johnny Harris' on Victory Drive it was Smith Air Conditioning. He said they categorized Smith Air Conditioning as an office. Yet, he knows that as an office trucks were there and people coming in and out for orders. He said he felt this made the most sense and was the path of least resistance. He said this will be a sales office. He also stated they would not be allowed to display that equipment on the premises unless the Board approves the petition. He said they felt if the Board approves the use they were still not done. He said it was his understanding that they would still have to go before the Metropolitan Planning Commission.

Mr. Sharpe asked if there would be concrete pumping trucks stored at this facility?

Mr. Yellin stated no. He said they were not talking about heavy equipment trucks. The intended use is to have 4 or 5 trucks that would be big and small parked in the back where they would not be seen.

Mr. Stewart asked if there would be a repair garage on site?

Mr. Griffin stated no, they would be serviced at another location (Robert's Diesel).

Mr. Cohen asked who will operate the truck rental facility?

Mr. Griffin stated he will.

Mr. Yellin stated to his knowledge there have not been complaints about commercial activity at this location.

Mr. Cohen stated in looking at the scheme he did not understand how they could pick and choose among various enterprises or businesses to allow a laundromat, cabinet shop, mechanical systems contracting, and plumbing and things like that, but disallow the truck rental facility. However, he noticed what their concerns were because if you look it says; "provided there shall be no sale or display of equipment on the premises unless otherwise permitted in this section." He said further down where it talked about cabinet shops, plumbing contracting, it says; "provided there shall be no exterior storage the activity is carried on wholly within the enclosed building and the use does not produce noise in violation of the standards or characteristics set forth in the Chatham County Noise Ordinance as incorporated here and by reference." He said he felt there was the concern, regardless of what the business was.

He further stated if you look at subsection H in the staff report it says; "a change from one nonconforming use to another nonconforming use shall be permitted only with the approval of the Zoning Board of Appeals upon a finding that the requested use will not generate more vehicular or pedestrian traffic than the existing or last permitted use." He said it has been mentioned that the subject property is presently used by a concrete contractor. He said the amount of traffic, vehicular or pedestrian presently generated by said uses unknowingly could be reasonably assumed that a truck rental facility would generate more vehicular traffic, thus having a greater negative impact on the surrounding residential neighborhood. He asked the petitioner if he could address those issues?

Mr. Yellin stated the existing traffic and the proposed use was negligible. He said on any given day one use could have more traffic than the other use. He said he felt there were all kinds of assumptions that could be made about traffic and what would be produced. He said he knew there was little traffic with the existing use and very little traffic with the next use. Particularly, compared to all these things that could go on the site as a matter of right in this listing. He said he felt some of the uses were far more intense than what they were proposing.

Mr. Cohen asked if he could address where it says that the use does not produce noise in violation of the standards or characteristics set forth in Chatham County Noise Ordinance as incorporated herein by reference.

Mr. Yellin stated that was paragraph 7, which was a different use.

Mr. Cohen asked if the Board grants the petition, how was it that the new use going to conform with that concern? The use does not produce noise in violation of the standards or characteristics setforth.

Mr. Yellin stated he felt it was a dramatic improvement. He said if the Board thought about the last 20 years between Thompson Sanitation, Superior Sanitation, ambulance service (24 hours a day), and Sea Tow, where boats were being repaired. It seemed to him what they were doing in all events this use was less of a noise production than all of the uses over the last 20 years.

Mr. Burke Wall stated this building was there before any of the houses were built along Johnny Mercer.

Mr. Watford stated at one time between the 1950's and 1960's there was a towing company there that used to haul all the wrecks off of Tybee Road and there were houses next door to it, so this building was not built before some of the houses.

Mr. Wall stated they felt what they were asking for was going to be an improvement for the location. The location has had numerous types of businesses.

Mr. Sharpe asked what was the current zoning?

Mr. Yellin stated R 2 – A.

Ms. Virginia Keith (resident of Talahi Island) stated she wanted to make sure that whatever is approved to go there that it does not interfere with the recreation because the children would be right behind it.

Mr. Cohen asked if she was opposed or in favor of the change that the petitioner was proposing?

Ms. Keith stated she would like to see it made into something nice, but she also wanted it to be safe for traffic going and coming.

Ms. Mary Ann Himes stated her concern was that traffic was a problem. She said Brooks Park was in the process of being redone, and she felt it would be used more when it is finished. She said the traffic is bad along that area and has increased. She said she was concerned about 40 foot moving vans coming out of that location. She said in regard to a sales office having the right to display equipment it was her understanding that this was for lease business and not for sale. She said she felt the petitioner had the right to have something there that would develop a good income. However, she did not feel the trucks coming out onto Johnny Mercer was a good idea.

Mr. Steve Holloway stated he lives about 2 – 2½ miles from the site and drive by it regularly. He said he has seen the usage of this area and the home that was in front of the trailer was in a state of total disrepair. He said he also felt the storage they used around the outside was an eyesore. In regard to using this property for the trucking business and getting people who were not familiar with driving large trucks to come and rent a large truck and try to drive it in this area he felt would be hazardous to the people. He said the intersection at Quarterman and Johnny Mercer was a real hang up as far as trying to get in and out because there was only a stop sign there.

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

Mr. Cohen stated Mr. Yellin still had a point to make.

Mr. Yellin stated the people who have spoke in opposition to the petition live at least 2½ - 3 miles away. He said as a part of the process they notified every single property owner within 200 feet and to his knowledge there was nobody here who lives directly across the street or next door who has raised an objection. He said also if the issue was one of traffic, something was going to go there. He said it did not make sense for it to be vacant and it was not realistic that it was going to be a home, therefore you know it would be a business of some kind. He said he felt focus was on their one requested use and the fact that it might or might not bring more traffic, but ignoring what the existing allowable uses were and the traffic that they generate. He said he would submit that those produce far more traffic than what they were proposing.

Mr. Cohen asked how many trucks does the petitioner expect to utilize the facility and what was the maximum size of the trucks that would be used?

Mr. Griffin stated there will be 4 to 5 trucks stored there on any given day. The average traffic would be 3 to 5 trucks a day, which he felt was minimum. He said the size of the truck would be approximately 40 feet.

Mr. Sharpe asked if the trucks were moving vans or semi-tractor trailers?

Mr. Griffin stated they were moving vans, which was the same things as u-haul trucks. He said Islands Moving and Rental have the same thing that he was proposing.

Mr. Sharpe stated but they were not semi-tractor trailers?

Mr. Griffin stated no.

CZBA Action: Mr. Sharpe withdrew his motion for denial.

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals approve the change to a non-conforming use as requested pursuant to the requirements of Section 8-4 of the Chatham County Zoning Ordinance subject to the following conditions: (1) That no trucks over 40 feet may be kept on the site and (2) That no more than five trucks be kept on site at any one time. Mr. Day seconded the motion and it was passed 3 - 1. Opposed to the motion was Mr. Stewart.

**RE: Petition of Robert Williams
B-05-35453-1
46 River Oaks Road**

Present for the petition was Robert Williams.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a 15 foot rear yard setback variance to 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 a PUD (Planned Unit Development) zoning district.

Findings

1. Section 4-6.1 requires a minimum 25 foot rear yard setback for single family residences in the PUD zoning district.
2. The subject property is a standard lot measuring 175 feet wide by 95 feet deep (16,625 square feet). There are no irregular topographic features associated with the property. A single family residence presently exists on the parcel.
3. The petitioner is seeking to construct a 25 by 25 foot addition at the rear of the existing residence. The addition is to be built “in line” with the existing structure which already encroaches into the required rear yard setback. No variance approval for the existing encroachment could be found.
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 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.

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

Strict application of the development standards for the district would not create an unnecessary hardship.

- 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. Although the proposed addition will encroach into the required rear yard setback, it will be constructed “in line” with the existing structure. The residence will be no closer to the rear property line than what currently exists.

Summary of Findings

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

Mr. Williams stated the house was owned by his parents, which he purchased from them. He said prior to his parents' ownership the house was owned by Mr. Moody. He said Mr. Moody had something to do with building permits, but felt that he did not need to get his own permits and that was how the addition was added. He said Mr. Moody actually built two additions to the house. The first was in the back and the other was on the side where it says new bath, which was a walk-in closet. He said the additions were all made prior to his parents buying the home. He said his parents purchased the home in the early 1990's in which he purchased it from his parents last month. He said his parents have ill health and what he was looking to do was add the addition onto the house and him and his wife will live in the back portion so they could take care of his parents.

Mr. Cohen asked if it was going to be a bedroom?

Mr. Williams stated it would be a two story structure. He said half of it would be an additional bedroom space for his parents and the things that they require for their care. The other half will be a general sitting area. He said the upstairs was where him and his wife will live in their bedroom.

Mr. Cohen asked if it went above the current roofline?

Mr. Williams stated yes.

Mr. Sharpe asked if the height of the roof was within the requirement of the height ordinance?

Mr. Williams stated yes.

Mr. Day stated he was looking at adding approximately 1,250 square feet to the house.

Mr. Cohen stated the Board was supposed to uphold the ordinance, but they were allowed to grant variances or exceptions to the ordinance under certain hardship conditions. He asked how old was his father?

Mr. Williams stated 63.

Mr. Cohen asked what was wrong with his father?

Mr. Williams stated about 2 years ago his father had open heart surgery and came home for seven days and had a stroke. He said his father was now disabled.

Mr. Cohen asked if he was the primary care giver?

Mr. Williams stated it was shared between him and his mother. However, his mother was also now in a situation where her health was failing.

Mr. Sharpe asked if he felt as though he was suffering from distress if he did not do this?

Mr. Williams stated it would just add to his concern. He said he currently owned a home on Whitemarsh Island (Battery Point) and just traveled back and forth everyday. He said consolidating homes would reduce the amount of trouble and stress.

Mr. Day stated he was asking to take a home that was approximately 4,400 square feet and to make it approximately 7,000 square feet. He asked if there were other homes in the area that was 7,000 square feet?

Mr. Williams stated he was not sure, but there were some relatively large homes out there.

Mr. Day stated he was concerned that he was creating a situation where at some point in time if this house is to be sold he would not be able to sell it.

Mr. Williams stated he talked to a realtor who also mentioned that. However, he felt the money that were going to have into the home could be recuperated from looking at the price of some of the other homes in the subdivision that were comparable in the area.

Mr. Day asked if there was a place that he could put the addition onto this house that would not require a variance?

Mr. Williams stated they could probably find another place to do it, but he was not sure that it would be financially feasible.

Mr. Day stated he already had one violation on the property and to put another one concerned him because he was not sure that was the appropriate thing to do if there was another space to put it on the lot.

Mr. Williams stated he would have to do it going up to a second floor.

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. Cohen seconded the motion and it was passed 3- 1. Opposed to the motion was Mr. Day.

**RE: Petition of Lynda S. & Gilbert H. Werntz, Jr.
B-05-57646-1
425 Suncrest Blvd.**

Present for the petition was Tim Walmsley, Attorney and Lynda Werntz.

Mr. Howell gave the following Staff report.

The petition was continued from the April 26, 2005 meeting because the Board requested an opinion from the County Attorney as to whether the Board is able to rule on the petitioner's request based on Section 3-4 of the Ordinance. An opinion is anticipated to be available at the public hearing.

The petitioner is requesting approval of a 25 foot lot width variance from the 100 foot lot width requirement of Section 4-6.1 of the Chatham County Zoning Ordinance in order to subdivide an existing lot at 425 Suncrest Boulevard within an R-1-C (One-Family Residential) zoning district.

Background

On November 24, 2000 Lynda and Gilbert Wertz applied to the County ZBA for a lot width variance at 425 Suncrest Boulevard in order to subdivide an existing lot. On January 23, 2001 the variance was approved by the ZBA. The ZBA decision stated that the decision and any related approvals would expire on January 23, 2002 unless a building permit is obtained prior to the expiration date.

On January 20, 2002 the petitioner requested a time extension of the January 23, 2001 approval. On February 26, 2002 the ZBA denied the request.

On July 5, 2002 Mr. and Mrs. Wertz were advised by the Secretary of the County ZBA, that the decision to deny the time extension was issued in error. The letter stated that the Zoning Ordinance does not require a time limit extension for the variance to remain in effect.

At the March 16, 2005 ZBA meeting, the Board approved rehearing the petition. The Board noted that the petitioner already has the right to submit an appeal as it has been more than 12 months since the last request (see Section 10-2 Rules and Procedures).

Findings

1. The property was rezoned from R-1 to R-1-C in 1997. The minimum lot size in the R-1-C zone is 32,000 square feet, and the minimum lot width is 100 feet.
2. The property (uplands) is 150 feet wide and approximately 468.3 feet long. The petitioner proposes to divide the property into two 75 X 468.3 feet lots. Each lot would contain approximately 35,122 square feet in 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.

- b. **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.

- c. **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 cause substantial detriment to the public good and impair the purposes and intent of the Chatham County Zoning Ordinance. Approving the subdivision would be approving the creation of two substandard lots (lot width).

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

Strict application of the development standards for the district would not create an unnecessary hardship.

Summary of Findings

All of the conditions required for granting a 25 foot lot width variance appear not to be met.

Mr. Cohen stated Ms. Werntz who is a well respected realtor in the community sold him his house at Wilmington Island. He said since then he has had other business dealings with Ms. Werntz and he thought very highly of her. He said he felt that may present the appearance of a conflict of interest.

Mr. Stewart asked if he felt like there was conflict of interest?

Mr. Cohen stated as a result of his business dealings with Ms. Werntz in the past he had very high opinion of her and he did not know that he could get that out of his mind.

Mr. Day stated he felt rather than putting Mr. Cohen in a position where he may have a conflict of interest he would ask that he not vote. However, he felt that he could participate and add his knowledge of experience but withhold from voting. He said there would still be a quorum and the Board could do this without his vote.

Mr. Sharpe stated he at one time many years ago rented from Ms. Werntz. He said he also had the opinion that she was very well respected. He said if that appeared to be a conflict then he would submit to the will of the Board.

Mr. Day stated the reason he said what he did in regard to Mr. Cohen was because in his business and everyday working relationship he has an opportunity to have more of an interaction with the petitioner than Mr. Sharpe. He said he would hope that Mr. Sharpe participate in the petition.

Mr. Sharpe stated he felt that he could give a fair and competent hearing to Ms. Werntz with all due respect.

Mr. Day stated he and Mr. Howell had some discussion off-site about this. The wording of obtaining a permit within a specific time frame was not part of the Board’s ruling, but part of the write-up that went in the form that went out to the petitioner. It was picked up as a result of boilerplate being submitted to the County from City Zoning Board of Appeals. He asked Mr. Howell if that was correct?

Mr. Howell stated yes. In addition, Board of Appeals was required to make their decisions by resolutions. He said the Board has been short in not doing so as noted by the decisions that have been made today. Simply by stating we approve a petition or deny a petition. He said no

resolution has been indicated by the Board, so in effect what he was saying was true but there was also no resolution going along with it either for the reasons for approval or denial.

Mr. Stewart stated there was a second vote a year later.

Mr. Howell read through the background report that is noted above from the Staff report.

Mr. Stewart asked when a decision is made by the Board and since the template has been removed from the form when a petition is decided upon if then the decision goes with the property indefinitely?

Mr. Howell stated he felt he could not answer that question because it was a legal question.

Mr. Stewart stated he felt the Board may need an answer on that. He said at the first meeting it was approved. The next time it was denied. He said if he was a neighbor and trying to preserve the integrity of the R-1C zoning classification and then someone comes in and wants to subdivide the property he would feel ill-at-ease to know that maybe next year all this work, planning, and preparing for the Board was of no use because in one year they could do it all over again. He said as a neighbor he would have no assurances that where he lived right now that he was not going to end up with someone splitting all the lots and he's sitting there on a 100 foot or 150 foot lot. He said he would not like that and would fight it. He said he felt for the protection of property owners he felt once a decision is made it should be indefinite.

Mr. Howell stated without going back into the background and details of what was legal and the templates, resolution, etc., twelve months has expired. He said once a decision is made (denial) a petitioner has a right to come back after twelve months and ask for the same thing. He said that was why Staff was looking at this as a new petition. He said the Board could get into the legalities, but he was not qualified to answer any of the questions in regard to the legalities. He said all he could state is what was written down, and the decisions made. He said he felt 12 months has expired and he felt this was brand new.

Mr. Sharpe stated in the Islands Land Use Plan it mentioned density. He asked if the lot was subdivided, in his opinion would that impact the density of the Land Use Plan's intent?

Mr. Howell stated he was not prepared to answer that question. He said he would have to look at the acres and number of dwelling units. He said if the petition is approved it would be creating two substandard lots.

Mr. Tim Walmsley, Attorney, stated he was the agent for Lynda and Gilbert Werntz who were the petitioners. He said he was present at the last meeting which was about 5 or 6 weeks ago when the decision was made to put this petition on this particular calendar. He has submitted to staff an attachment which has most of the documentation that he was going to refer to and point out at this meeting. **(See Attachment A)**.

He stated one of the things he submitted to Staff was a letter he sent to the County Attorney on March 23, 2005. He said he asked the County Attorney to help them figure out what in the world was going on here. He said what they got from their perspective was a 2001 variance request that was granted. In the language of the decision that came out of the County Zoning Board of Appeals it says that that variance will sunset in 12 months. He said it was important because under the County Zoning Ordinance there is no provision for a sunset on a variance. The reason that language is there based on his understanding and the way Staff explained to

this Board six weeks ago was there was simply a form that was used for both County and City. The same form used, the language got thrown into the form. But in fact the County Ordinance again does not have a sunset provision, the City Ordinance does. He said under the City Ordinance there is a specific limitation of 12 months on a variance. Under the County Ordinance there is absolutely no limitation on a variance once it was granted. He said once it was granted, it was their position that it was granted unless there was some significant change in condition. The January 23, 2001 petition was exactly what this Board was now considering. He said a 25 foot lot width variance pursuant to the requirements of section 4-6.1 for the existing lot in the R-1C zoning district. This zoning district had been an R-1 zoning district. In 1997, it was changed over to a R-1C, so you were dealing now with what was going on in an R-1C.

He further stated the decision of this Board explained that it had been rezoned in 1997 and the request was to subdivide the property into two 75 X 1000 foot lots constructing one residential dwelling on each lot. The buildable high ground in each proposed lot was approximately 39,000 square feet. He said addressing one of the questions of staff before the actual density based on the size of the lot falls within current zoning. The lot size was being narrowed, but due to the depth of the lot and the amount of high ground the density was not being increased beyond what it was already being zoned for. He said according to this Board once the decision came out the size of this property constituted an unusual circumstance that fulfilled one of the conditions that authorized the Board to approve a variance and then relief if granted would not cause substantial detriment to the public good or impair the purposes and intent of the Chatham County Zoning Ordinance. Based upon that, this Board adopted the following resolution which was to approve the petition to subdivide the property a 100 foot lot into two 75 foot lots. The decision as he explained has language at the end which was appropriate under the City Zoning Ordinance which says that this will sunset essentially, on January 23, 2002. He said that was the standard form that was being used. Based upon this document, January 2001, the Werntz's did at least one thing in reliance on that variance. He said they got a conditional order granting the application for the request for a variance with regard to sewer. He said they went through the process with Janet Howell of approving a septic system on a divided lot. He said there were soil surveys done, documentation regarding the soil survey, inspections worksheet, and a proposal was provided to the County with regard to this septic system. It showed the house, drain field, how it was being divided and so forth.

Mr. Sharpe asked what was the distance between the heavy line of the house that was showed on the plans and the lot line?

Mr. Walmsley stated 11 feet on one side and 10 feet on the other side. He stated that he believed it was July 2001 that the petitioners went through this process.

Mr. Day asked why did they go through this process? He asked was it to develop separate pin numbers for these lots?

Mr. Walmsley stated they were figuring out what they needed to do in order to get the subdivision taken care of.

Mr. Day asked if they were applying for a minor subdivision?

Mr. Walmsley stated no. He said what has brought them here today was the application for that minor subdivision because they were told that their variance had expired so they were not going to be given a subdivision.

Mr. Day stated they were doing work in conjunction with getting all their ducks in a row, so that they could do a minor subdivision and ask for a permit?

Mr. Walmsley stated correct.

Mr. Stewart stated he remembered from the original petition that it was going to be subdivided and given to the property owner's children. He said now he saw a for sale sign. He asked what happened? He asked if the property was being subdivided and resold for profit?

Ms. Lynda Werntz stated the property has a block house sitting on it. She said their son moved here from the north and was living in the house at the time. She said they were trying to get it subdivided so that they could have him and their other son who was still not able to get a job in Savannah, so they have not been able to get him back to Savannah. After getting all this ready for subdivision their son determined that they were making their plans based on their building costs in Virginia. She said when they got the plan and submitted it, the cost was going to be more than they could bear. Therefore, they had to stop the process at that point. She said they were under the impression that their subdivision did not expire. She said they decided to wait until a better time to try and to get the other son here and maybe he could take advantage of one of the lots and then maybe they could sell the other one. However, that has not evolved, so that was why they were trying now to sell the property.

Mr. Stewart asked if they were selling it as one lot or two lots?

Ms. Werntz stated she has been trying for a year on one lot.

Mr. Walmsley stated based on the language the petitioners figured it was in their best interest to make sure everything was take care of. He said they asked MPC in January 2002 to extend the petition for the lot width variance for the two lots. He said they have been unable to finish with this process of subdividing, so they came back because they thought it was necessary to do and ask for the extension. He said they did not appear at the February meeting because again they thought it was just one of these things where they submitted a letter and they could get their variance passed through. But in February 2002, this appeared as a new agenda item requesting an extension until January 23, 2003. However, this time around the Board of Appeals denies their request for variance.

Mr. Day stated the Board did not deny their request for a variance. He said the Board denied the 1 year extension.

Mr. Walmsley stated correct. He said the denial was not of a new variance, but of the existing variance, which was February 2002. In July 2002, on MPC letterhead signed by Dennis Hutton who at that time was the Secretary of the Chatham County Zoning Board of Appeals sends a letter to the effect of – “the Zoning Ordinance does not require a time extension for the variance to remain in effect. A subsequent decision of the Zoning Board dated February 26, 2002, was issued in error.” He said the reason he suggests for that was because the Chatham County Zoning Ordinance does not have a time limitation, there is no sunset provision. He said Mr. Hutton sends a letter explaining that the February action of the Board was unnecessary. He said what happens is that the petitioners go to the County to finish the subdivision. When they go to the County finish the subdivision a question comes up on what exactly the status of that variance is. He said that was why they have ended up here today. He said because through a tangle maze and a bunch of different paths they have been told that they all needed to appear today to make a decision on the petitioners request for a variance. The question that comes up

is were they talking about the 2001 variance, which they submit is still valid or were they deciding whether or not it is or is not valid or were they looking like at this anew. But there question from the County Attorney on March 23, 2005 was confirmation that if they appeared today and presented information to the Board to make that decision that they did not waive any rights that they had with regard to arguing the 2001 variance was valid. In other words, by talking to the Board about a variance in 2005, were they now saying that the 2001 variance went away. He said they were not saying that and he wanted to make sure the Board understood that. He said their position was quite candidly the 2001 variance should still be in effect. But if you wish to consider whether the variance should go into effect in 2005 as a new petition that was the Board's prerogative.

Mr. Day stated his question would be if Mr. Hutton sent a letter stating that the action taken place to deny the extension, not the variance, and that was a legal binding document at whose request did he do that. He said had the County Attorney looked at this and said that that time limit in the letter was not correct, so Mr. Hutton please send a letter stating to these folks that it was not correct and that action was invalid.

Mr. Walmsley stated all he could say to that was that he has attempted to contact the County Attorney, probably six times in the last three weeks. He said he tried to contact the County Attorney twice yesterday to find out what exactly the status of this was. He said the letter he submitted into the record was a three page letter explaining their side of the story and asking for some guidance from the County. He said he could not answer their questions because he did not know what the County was doing at that time.

Mr. Day stated his point was that if the County (Mr. Hutton) representing the County has said that the action taken by the Board to deny the extension and he did represent the County was in fact legal then the original zoning decision by this Board was still in effect.

Mr. Walmsley stated that was their position.

Mr. Day stated unless someone tells him differently, he would have a real hard time voting to even hear this as a new petition because in his opinion the Board heard this petition once and made a decision. He said the Board did not deny the petition to split the lot. What the Board did was deny the extension. So, now Mr. Hutton was saying that the action taken by the Board to deny the extension was an invalid action, so that was a moot point.

Mr. Walmsley stated that was their position all the long.

Mr. Day stated the Board has voted on this once and he did not see why the Board had to vote on splitting this lot twice. He said he knew there were folks present who probably did not want to hear that, but if in fact the Board voted on this once and this sunset clause should not have been there and Mr. Hutton said it was wrong that it should not have been there then someone had to tell him to do this. He said someone of higher authority had to make a decision on that element. He said he felt the Board should not be hearing the petition.

Mr. Stewart stated the Board was hearing a new petition as presented by Staff.

Mr. Day stated he disagreed because the Board has heard this same petition before. He said the Board voted on this once in 2001 and were given approval to split this lot. Unless the County Attorney was willing to come in and say Mr. Hutton was wrong and that statement that gave them only one year to get permits was a valid statement and should still be on Board's

decisions that goes out to every single petitioner then these folks he felt had the authority given to them by this Board to split this lot. He said he did not see how the Board could go back on that.

Mr. Cohen stated procedurally if that was the case then what the Board would be doing is adopting the original decision of 2001 that granted the petition.

Mr. Day stated he felt the Board did not have to do that.

Mr. Cohen stated there was a petition before the Board. He said he felt the Board had to do something with this petition. He said the Board could not dismiss it and the petitioner was not going to withdraw it. It was here. He said if the Board felt that way and that was the case then what they would be doing was adopting the decision of the Board 2001 and grant the petition. It gives them the same thing that they had in 2001 in 2005.

Mr. Howell stated there were a lot of procedural questions and legal questions that have been asked and not answered. He said he felt that it was not within this meeting to determine certain things as one the legality or legal right of a staff person to make a ruling about whether the Board of Appeals petition was issued correctly or incorrectly. Whether that carried any weight in the court room, he did not know. There were some other things that were beyond the realm of what the Board was doing today. He said whether the Board agreed with it or not, the Board certainly has the authority to make conditions on property and time limits would be one those. Whether it was stated or not, the decisions have been signed, so it was implied that they have been read and that people were aware of it, which was another side issue. He said the Board placed conditions on property all the time. He said if the Board noticed, on today's agenda that was one of the items that they were going to discuss under Other Business. He said if the Board felt it was the appropriate time now to do that they could briefly go over the memo that was previously presented to the Board about time limits and what the Zoning Ordinance says about it. He said Staff's position was that the staff report of 2005 did not agree with the staff report of 2000.

Mr. Day stated he did not have a problem with the Board putting on conditions on approval or denial. He said he also did not have a problem with the Board putting time limits on something if that was the appropriate thing to do. He said he did not believe that Mr. Hutton in his capacity at that particular point-in-time would have taken it upon himself to write a letter that said that the decision of the Board was an invalid decision. He said he felt that someone gave him that direction. He said may be that was a decision that should be pushed to the County Attorney. However, as mentioned that this was a new petition the Board had the ability to either vote for or against this new petition. He said if the vote went in a direction that either group did not like they had the ability to take it to another level and that may become part of that at that point-in-time.

Mr. Stewart stated one way to look at it was that Mr. Hutton was not there to speak for himself. He said he felt it was a legal question and the Board could not make legal decisions. He said that was why he felt the Board could not go back to the original or the last one. He said it was a new case and the Board should view it on the merits as of today.

Mr. Walmsley stated the MPC letter was cc: to Dan Jensen who at the time was the Chatham County Zoning Administrator, so Mr. Hutton was not acting alone. He said if he was, he at least went up the chain of command with the letter.

Mr. Sharpe stated he felt the question was by what authority did Mr. Hutton make this decision and determination.

Mr. Stewart stated Mr. Hutton was not present to speak for himself.

Mr. Day stated he felt the Board had two choices. He said the Board could either table this and go to the County Attorney and ask that he make a ruling or they could look at this as a new petition and the Board could vote on it.

Mr. Howell stated the County Attorney has been copied on all the information that was generated by MPC Staff and the Secretary of Board of Appeals.

Mr. Day asked if the County Attorney has come back with direction.

Mr. Howell stated like at the last meeting, his instruction to him was, which he passed along to the Board was for the Board to consider rehearing the petition.

Mr. Sharpe asked the Chair if they could hear from other members of the public?

Mr. Bubba Hughes, Attorney, (540 Suncrest Blvd.) stated he hated to throw another wrinkle in this that related to the County Attorney in regard to some property that was on this same block. He said at that time Mr. Hart gave the opinion that the Zoning Board of Appeals does not have the authority to grant a variance as to lot width. He said unless the text of that Zoning Ordinance has changed, the rule was that because of section 3.4 of the Zoning Ordinance the Zoning Board of Appeals shall not be authorized to vary this requirement. He said it was a 100 feet. Whatever happened back in 2000 may very well have been invalid at that time according to Mr. Hart's opinion, which he would like to get into the record. It was dated July 26, 2004 and this was when Mr. Myrick was here petitioning to reduce a lot close to Highway 80. He said it went to Mr. Hart so that he could answer the question of whether or not the Board had the authority to do that if you wanted to. He said Mr. Hart came back and said "no." So, even if the Board wanted to grant the petition today according to the current opinion they could not do it, regardless of where the merits lied. He said as far as he knew nothing had changed. He said Mr. Sharpe asked a question about density, and the density requirement in this zoning district was 1.35 dwelling units per acre, which would be exceeded by the subdivision that the petitioner was requesting. He said everybody here has been through this and there was a petition prepared objecting to the request, but he did not see how the Board could do this without going back to Mr. Hart. He said like Mr. Walmsley, he has tried to get in touch with Mr. Hart also saying what are they doing this again for and has something changed. He said he felt Mr. Hart needed to answer that question. However, Mr. Hart's opinion as of July 26, 2004 was that this Board did not have the authority. Whether you call it a variance, subdivision, or whatever the Board could not reduce the size requirement of lots in this district. He said he could go into the merits of this if the Board wanted to hear it, but that was Mr. Hart's opinion and he assumed that nothing has changed that would alter that. He said it was not different than what was attempted up the road, which was denied or could not be acted upon. He said Mr. Myrick was told that he would have to go to the Board of Commissioners to deal with it and that issue went away. He said there was some dispute going on about the way the adjusted the entrance road to whether they had 100 feet frontage at the front and the lots tapered back and whether or not you had to have 100 all the way back. He said he did not think that applied to the Werntz's because the application was to make it 75 feet, which Mr. Hart has issued his legal opinion saying that this Board could not do that.

Mr. Cohen asked if there was a written opinion on that?

Mr. Hughes stated yes, dated July 26, 2004.

The Board reviewed the document.

Mr. Hughes stated Mr. Hart went through what the particular request was in that case and it gets around to section 3.4 which pertained to reduction or change in the lot size and it goes to lot width. He said further down it says – “the Board of Appeals shall not be authorized to vary this requirement.” Next paragraph says, “given the fact that R1-C requires a minimum lot width, section 3.4 does not permit a variance in regard to lot width.” He said it especially provided that the Zoning Board of Appeals shall not be authorized to vary this requirement. “I don’t believe it was within the power of the Zoning Board of Appeals or the Metropolitan Planning Commission to vary the minimum lot width in this particular situation.” He said he felt that it was nothing different here. You have undeveloped property that they were seeking to reduce the lot size and this Board could not do it. The only body that could was according to Mr. Hart was County Commission.

Mr. Day stated why did the Zoning Administrator bring this before the Board.

Mr. Hughes stated the issued slipped by when Mr. Myrick tried. He said he could not speak for anybody, but himself.

Mr. Cohen asked if he was saying that when the Board acted in 2000 they were operating outside their authority?

Mr. Hughes stated correct, and would be today. He said under Mr. Hart’s opinion issued in July 26, 2004. He said he did not know because in July 2001, Mr. Mahoney may have been the County Attorney and had given a different opinion based on the Zoning Ordinances at that time. But as of last year and today that was the law as coming from the County Attorney.

Mr. Day stated he was on the Board at that time and Mr. Hart was the County Attorney.

Mr. Hughes stated may be the issue did not come up in 2000. He said he did not doubt that this issue has slipped by before, but it came up on this very street last year. He said it was hands off, and you did not have authority to do it. He said there was not a thing different about the request today.

Mr. Cohen stated what if they had gone on with it back then and completed there projects. He asked would they be saying what you did you had no real authority to do after the Board granted it and they had already constructed, built, and everything.

Mr. Hughes stated that he probably knew vested rights laws as well as he did. He said if a permit was issued in error no rights vest at all. He said it was a good thing a house has not been built because it may have to come down, which was in fact the law. The requirements for meeting a variance was not met anyway because there was absolutely no hardship. He said they were just trying to make two lots into one. He said he had nothing personally against the Werntz’s, but the point was legally that the Board did not have the authority to do this according to Mr. Hart. He said if the Board was going back to him with questions as to whether or not Mr. Hutton had the authority to write a letter then the Board may need clarification on this point to.

Mr. Day stated if Mr. Hart was saying that the Board did not have the authority to do this, yet he tells Mr. Howell have the Board to consider the petition again and hear it as a new petition, but the petition was basically the same.

Mr. Hughes stated he doubt seriously the issue was brought back to his attention that you could not do a lot reduction any way. He said he would guess that he was thinking about subdivisions and what the authority was on granting subdivision and did not get into the debate about lot sizes in R1-C district. He said that was his guess because he could not reach Mr. Hart on the telephone either.

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals continue the petition until this has been reviewed by the County Attorney and that the County Attorney comes back with a definitive decision on whether the Board has the authority to do something other than what section 3.4 states in the County Zoning Ordinance. Mr. Stewart seconded the motion and it was passed. Abstaining to the motion was Mr. Cohen.**

Mr. Christopher Acker (545 Suncrest) stated a substantial group of people have come out. He said they had a number of petitions against this. He said if something like this goes notwithstanding the rulings then everybody up and down the street could take every lot and subdivide it into two. He said the reason they had the R1-C was for the 100 foot width. He said assumed the Wertz's went to staff with this plan in which they had 102 feet of frontage with a little green space, 1.2 acres of 80 feet in the salt marsh buffer area. He asked could that be approved at staff level?

Mr. Cohen stated he would not answer these questions.

Mr. Acker stated the point was when Mr. Myrick came last year Gail O'Meara did exactly the same thing up the street. He said their concern was that people were going to go through the back door and put in 75 foot lots. He said they had another petition against that. He said what the Board saw in this particular issue was a plan approved at staff level with 75 foot wide lots without any petition whatsoever. He said it would be his contention that the Wertz's submitted this and the fact that this was already approved she would not even have had to come to this meeting. He said he felt there was either two things happening. Either this was wrong or this was right. He said she either had to be here or does not. He said they strongly suggest the disapproval at staff level was done in error. He said they wanted to know how they could remedy this. He said he also sent a letter to Mr. Hart and the head of the Commission without even a courtesy call to say yes they received the letter. Again, a very disturbing situation again and they were all here quite unhappy. He said they basically were going to leave their protest up here in perpetuity so that they did not have to keep gathering the neighbors to take time off work. He said they had more than 100 people sign the petitions.

Mr. Cohen stated the Board appreciated them coming down and expressing their view and giving their opinion. He said they appreciated very much all of the Suncrest residents coming down. He said the Board has taken a vote, which he abstained but it was going to come back after the County Attorney has had an opportunity to review this again. He said he was sorry that it was an inconvenience and it does not happen all the time, but occasionally it does happen where the Board have complicated matters. He said the residents have been here all day and have heard that some of the petitions were very cut and dry situations for the Board. However, this petition was a complicated situation because of the procedural history that has gone on and the Board needed the County Attorney's input.

Mr. Acker stated when the Board does this could they also put in what the residents found as highly unusual and illegal 75 foot lots that were approved they felt in error at staff level up the street or would they have to retain Counsel.

Mr. Cohen stated he felt if the County Attorney renders an opinion saying that the Board was authorized to consider this again then all of these things will be taken into consideration. He said he will not vote now and he will not vote then, but the rest of the Board will take all of these matters and opinions into consideration on their vote.

Mr. Acker stated his question was on the illegal division of the 75 foot lots, if they go to Mr. Hart or do they retain Counsel or Superior Court.

Mr. Cohen stated the Board could not tell him what to do. He said the residents have Bubba Hughes who is also a resident and a capable attorney.

Mr. Acker asked what do they need to do with their petitions?

Mr. Day stated to give them to Staff.

RE: Minutes

1. Approval of CZBA Special Meeting Minutes – March 16, 2005
2. Approval of CZBA Meeting Minutes – March 22, 2005

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Special meeting minutes of March 16, 2005 and Regular meeting minutes of March 22, 2005. Mr. Stewart seconded the motion and it was unanimously passed.

RE: Other Business

1. Sunset Rule on Granting Variances

Mr. Howell stated Staff has cited three sections of the Zoning Ordinance which he has provided to the Board.

Mr. Cohen stated if what they have read is true, what Attorney, Tim Walmsley said about once a decision was made there was no time limit was contrary to what the Board was reading.

Mr. Howell stated what he was saying was that the Zoning Ordinance does not say anything about time limit on Board of Appeals decisions.

Mr. Cohen asked how was it different the Chatham County Zoning Ordinance section 10-4.5 Board of Appeals decision invalid after 6 months reads as follows:

Mr. Howell stated that was for building permits.

Mr. Cohen asked if all of these were cited out of the ordinance?

Mr. Howell stated yes.

Mr. Cohen stated there was a conflict at 10.6 because it says – “provides that a use approval shall run with the property. Any approved use which ceases to operate for a period of 1 year shall require Board approval to be reestablished.” He said that was conflicting. He said may be the County Commissioners needed to look at what they had done and how they drafted this. He said he felt it was poor drafting because rules should be clear. He said he also felt they should be understandable by the average citizen when they read it. He further stated the County Attorney has indicated that the Board could set time limits which conflicts of the use approval should run with the property.

Mr. Howell stated he felt that meant that the Board if they chose could say you have 6 months to act on that decision.

Mr. Cohen stated he felt they needed to delete where it says – “provides that a use approval shall run with the property.” He said if they wanted the Board to be able to set time limits.

Mr. Howell stated or they could delete the other sentence where it says – “any approved use which ceases to operate...”

Mr. Cohen stated it depended on what they wanted. He said they seemed to want it both ways which was conflicting. He said he felt they needed to clear this up because this provision was very confusing. He said if the County Commission wanted the Board to be able to set time limits then they needed to strike and delete – “provides that a use approval shall run with the property.” He asked if the Board could get that message to the County Commission?

Mr. Howell stated it would be done in the form of a text amendment.

Mr. Cohen stated he felt it needed to be cleared up because it would be a source of irritation with a lot of situations because it was not clear.

Mr. Day stated in section 10-2, the County Attorney has indicated that the Board could set time limits.

Mr. Cohen stated the County Attorney has the authority to express that opinion. However, the opinion was for the Board to think about, look at what they had, and see whether something else needed to be done. He said he felt something else needed to be done. He said he felt it needed to redrafted so that the average person who read it knew where they stood.

Mr. Cohen made a recommendation that this code section of the ordinance be brought to the attention of the County Commissioners. He said may be staff could draft it two ways for them. He said (1) that it runs with the land and (2) strike the provision allowing a use approval to run with the property which would allow the Board to put limits on what they did.

Mr. Day asked if he wanted to make a motion that Staff do a text amendment?

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals recommend that a text amendment be submitted to County Commission in reference to Section 10 of the Zoning Ordinance. Mr. Day seconded the motion and it was unanimously passed.

2. Robert's Rules

Mr. Hansen stated he provided copies to the Board prior to the meeting. He said this was in response to a question raised as to whether or not the Chairman has the ability to vote on motions before the body. He said in both the County Zoning Ordinance and Robert's Rules it says "yes" that the Chairman can vote.

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals adopt this opinion and become a part of the Board of Appeals operating procedures. Mr. Day seconded the motion and it was unanimously passed.

3. Board Tenure

Mr. Cohen stated his tenure has expired. He said he wrote a letter to Mr. McMasters saying that he was available for reappointment if he so chooses and if not that he please appoint someone else.

Mr. Sharpe asked what was the term that the Board serves?

Mr. Day stated he thought it was 5 years.

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 1:00 p.m.

Respectfully submitted,

James L. Hansen,
Secretary

JLH:ca