

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

AUGUST 2, 2005

9:00 A.M.

SPECIAL MEETING

MINUTES

MEMBERS PRESENT:

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

MEMBERS ABSENT:

**Michael Lee, (Excused)
Charles Stewart, (Excused)**

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

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

RE: Called to Order

Mr. Watford called the August 9, 2005 Chatham County Zoning Board of Appeals special meeting to order at 9:00 a.m.

**RE: Continued Petition of Mark Curry, Agent for
Mark S. Kamaleson, M.D.
B-05-33253-1
816 Wilmington Island Road**

Present for the petition was Mark Curry.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a 16 foot height waiver to the maximum building height of 36 feet allowed in Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct a single family residence within an R-1-A (One-Family Residential) zoning district.

Findings

1. The petition was continued from the June 28, 2005 hearing at the request of the applicant. The original petition requested a 25 foot height variance. The proposed structure height has been reduced; however, a height variance is still required.
2. Section 4-6.1 of the Chatham County Zoning Ordinance allows a maximum building

height of 36 feet in the R-1-A district.

3. The subject parcel is a standard lot of nearly 3.23 acres, measuring 703 feet in depth and 200 feet in width. The site is presently occupied by a single family home which will be demolished to make way for the proposed construction of a new single family residence. The petitioner is requesting a height variance of 16 feet that will allow the structure to be constructed at an overall height of 52 feet.
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.**

The subject property is a standard lot of nearly 3.23 acres. There are no irregular topographic features associated with the lot.

- 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 above are not peculiar to the particular piece of property involved.

- 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 cause substantial detriment to the public good and impair the purposes and intent of the Chatham County Zoning Ordinance. The proposed structure height is totally out of character with the surrounding area and will overwhelm the riverfront.

Summary of Findings

All of the conditions necessary for granting a 16 foot height variance appear not to be met.

Mr. Cohen asked how many feet above the allowed height was the petitioner seeking?

Mr. Hansen stated the ordinance allowed a height limit of 36 feet. He said the petitioner was now requesting 52 feet, which was reduced from the original request of 61 feet. He said it would be a 16 foot height variance.

Mr. Cohen asked if there were any other houses in the neighborhood that exceeded the 36 foot height limit?

Mr. Hansen stated he did not find record where the Board had approved various height variances in that area. However, from observation there appeared to be some houses on Wilmington Island on Wilmington Island Road which exceeded 36 feet.

Mr. Sharpe asked approximately how many homes did he feel exceeded 36 feet?

Mr. Hansen stated he was not sure that he could give an exact number, but there were at least three or four homes that he saw. He said there may be more, but he did not know for certain.

Mr. Cohen stated he understood that he did not measure them with a tape measure. He asked if he could give him an idea about how much the homes appeared to exceed the 36 foot height limitation?

Mr. Hansen stated eyeballing it, it would be his guess that they were probably at or below 45 feet, which meant they exceeded the height perhaps up to 8 feet or 9 feet.

Mr. Cohen stated the ordinance limiting the height (36 feet) if he knew whether or not the houses that exceeded that limitation would have been built before or after the ordinance.

Mr. Hansen stated he felt because he could find no record of an approval by the Board to grant the additional height, he could therefore only assume that it was constructed prior to the ordinance being in place. Again, he could not verify that because he could not find record of the Board granting a variance for height.

Mr. Mark Curry stated he talked with Dr. Kamaleson and he still wanted to keep the roof top element (cupola). He said by changing the structure they have reduced the height from grade bringing it down approximately 9 feet from the original petition. He said the 36 foot height limit was an excellent height for communities where you had your neighbors within a number of feet and your distance from the street was within 35 feet or 40 feet of the street. However, this part of Wilmington Island Road (Wilmington Island Park) was a community. He said the homes were close together and was on city water and sewer. The homes along the river were large estate size lots. He said at least fifty percent of them have been subdivided or multiple lots combined together. He said you have individual single-family homes on these lots. One of the houses there was approximately 40 feet, which was an older home. He said at least five or six homes that have been built in the past 3 years – 4 years were in the 40 foot range. He said most of that was probably a result of changes in the style of homes. When Wilmington Park was constructed, the influence of the time period was more of a Frankfort Wright prairie ranch style homes. The homes along the river were more river houses, southern mansions, and so forth. The homes in Wilmington Park typically had 8 foot ceilings, slab on grade with a 3:12 slope or 5:12 slope roof, therefore it was easy to stay below the 36 foot height. He said the homes on the river some required elevation bases for flood plane. He said he did not know how the other houses were built without getting variances. However, he felt it was difficult to design a home and be limited to a height such as 36 feet.

Mr. Curry showed examples of homes that were tall such as the Davenport House, Kehoe House, etc. He said the style of homes that he showed as examples that were tall were style of homes that would be appropriate to see on an estate lot on the river. He said he felt the team that worked on the Islands Land Use Plan and set a height limit of 36 feet did so thinking that the majority of the area was going to be like Wilmington Park and other areas.

Mr. Sharpe asked if the other pictures that he showed were houses that were along Wilmington Park river?

Mr. Curry stated the quick pictures that he showed were on Wilmington Island, but they were in Marsh Harbor.

Mr. Sharpe asked if he knew when they were built?

Mr. Curry stated they were built within the past 5 years.

Mr. Day stated he understood where he was going with this. He said as he looked at the development of housing and the cost of land on the river one of these lots could cost you over 1 million dollars. He said he felt people would want to build larger homes to satisfy or justify their cost of the lot. But what he was telling the Board was people were possibly doing it without approval. He said the only person who would measure the height of the house would be the carpentry inspector. He said he also knew from being in the type of business that he was that the carpentry inspector did not go out and measure the height of the house. He said what it was telling him was that people were wanting to build houses like this.

He further stated that they put this standard in place (2001), but he did not know the reason why that standard was put in place. He said he felt that people probably did not think at that point-in-time that the value of these properties would escalate three and four times in 5 years – 10 years. As the properties escalated in value (bare lot) people are going to want to build big houses.

Mr. Curry stated he felt they would either want to build big houses or subdivide the property into a number of lots like the property next door.

Mr. Day stated he knew they were the first request which is sometimes the most difficult. He said if the 36 feet is wrong for the lots along the river, he would hate to see a situation where every time a lot sells and they get people wanting to build a house that was above the 36 foot level a request for a zoning appeal and the Board has to do a lot of spot zoning. He said it seemed to him that the right way to handle it may be to get the height requirement changed through County Commission. However, the Board could decide on this petition today, but that may be something to look at in the future. He said he felt he had a beautiful design and would love to see the house built. But he did not know if he was seeing anything that the Board should grant a variance on this for what reason other than the homeowner wanted to go above the height limit. He said he did not see a compelling reason other than that person wanted to do it. He said the ordinance says 36 feet, but if it was wrong then they were first to come forward and may be what they needed to be doing rather asking for a variance was going before County Commission and ask for a text amendment. He said he knew that would also take time, but he was not sure that he saw anything that was compelling to say that the Board should grant the petition to go above the 36 foot limit.

Mr. Curry stated they were not asking to do anything that they felt was going to impact the ordinance. However, they believed that if someone came up and said that they wanted to go up as well because they had a certain style of house they wanted to build that it should be addressed on the merits of the property at hand. He said some of the lots were 75 X 100 and they had neighbors nearby.

Mr. Day stated the Board would address each individual case on its own.

Mr. Watford stated the Board was about to lose their quorum in a couple of minutes because one of the members is an attorney and had to go to court.

Mr. Sharpe asked what was the difference in the use of the road and river and its impact of the view?

Mr. Curry stated on the river side if you brought your boat up to the bulkhead would be about 150 feet from the center of the house. The docks would be behind you. He said the typical boat traffic would be way back.

Dr. Joe Hustey (1802 Wilmington Island Road) stated he felt that once you started changing things for whatever reason the 36 feet was put in it would be spot zoning. He said anything that happened on Wilmington Island affected him whether negative or positive. He said he felt this was a negative. Once the Board grants the variance in height restriction on the river with this large tract of land, what was to say that he would not table it for two years and change his mind. He said the petitioner could come back to the Board and say that he wants to develop the land.

Mr. Day stated the petitioner could table it for two years because if the Board grants a variance it runs with the land. But if the petitioner came back and wanted to change the footprint, variance or use of the land he would have to get approval. He said not only could the petitioner do that, but that would apply for anybody.

Mr. Cohen stated he recognized the people in the audience (Logical Growth for Wilmington Island and Land Committee). He asked if they were opposed to this granting of a variance?

Ms. Mobley stated yes.

Mr. Cohen stated the Board also had a petition with signatures in opposition to the petition. He asked if they would be offended if called for the question of a vote against or in favor without any further discussion because if they did he has to leave this meeting which he announced to the Board because he has to be to the court house at 10:00 a.m.

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

Mr. Curry asked if he could request a continuance?

Mr. Cohen withdrew his motion.

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

***Mr. Cohen left at 9:50 a.m.**

Ms. Mary Ann Heimes stated she was the chairperson of the Islands Land Use Plan committee. She said it was said that whatever crew decided height variance may be they needed to go back. She said she was a part of that crew. Also, a part of that crew was Milton Newton, Bill Saxman, Tom Wilson, and various MPC staff who not only guided them through the process they instigated the process. She said the height limit of 36 feet was put in place because of the Bull River condominiums. She said the people on the Island were furious when that happened which they did not know anything about it. She said the height restriction was done because it seemed fair and equitable. She said she used to live in Wilmington Park and they have increased by 400 percent. Does that mean that they should be able to build a higher, bigger house than what they were on the lot with the requirements?

Mr. Day stated what he was saying was that the picture changes and over time the picture has changed. He said what he was saying was that as the values of these lots are getting bigger and bigger people are going to be looking at building a house that was proportionate to the value of the property. Whether that meant that the house was 62 feet tall or if the house was just bigger on the lot, they were going to be looking at building homes that were proportionate to the value of the lot. He said that really meant as far as the impact on the guidelines that were put in place, he did not know. But, he felt that petitioner's house was a beautiful house. Was this the right place for it, he did not know. He said would that look well out on Wilmington Island? Probably. Would it look too large in that area in relationship to the rest of the houses in today's environment? Probably. He said if they looked down the road 10 years to 20 years from now if these lots are selling for 5 million and 6 million dollars if the values continued to escalate people were not going to build a \$200,000 house on a 5 million or 6 million dollar lot. He said people were going to continue to push this style of house or this value of a house. He said things are changing, designs are changing, and the picture is changing. He said he felt Dr. Kamaleson even though he was the first person to petition the Board if he was him he would go to County Commission and say that the height variance need to be rethought because of change and list them. He said he did not like spot zoning. He said he felt that Board should not take and grant a variance that petitioner was requesting on this one lot. He said he felt that if this house should be built on this lot then every lot along the river should also have the ability to do so.

Ms. Heimes agreed with Mr. Day. She also stated that she felt before that was done, they must realize that there were a lot of other people who lived along Wilmington Island Road who liked their houses and wanted to maintain the style that they have there. She said she felt that those people had every much a right as the next person. She said she did not think you could say well this one has merit because it was a bigger lot or they paid more for it because that did not make any difference. She said every house that was noted by the petitioner that was higher than the 36 feet was about 40 feet or 42 feet and not 52 feet. She said she felt spot zoning was not the answer because it negated all the hard work of the citizens and MPC.

Mr. Day stated what he was saying was that he believed there were certain situations that required zoning variances. He said he felt that there were people along Wilmington river that wanted to maintain the style of houses that they had because he has seen the same thing happen downtown (Historic District). He said what he was also seeing downtown was a lot of people who have lived there for a long time cashing out because the values were so high and move to Ardsley Park. He said that what's happening and that what's going to happen out on Wilmington river.

Mr. Sharpe stated he felt that if a plan is adopted and you have a regulation, and as mentioned by Mr. Day you some times have to re examine things and slow growth is controlled growth. However, he also felt there were other ways you could design a house and get the same effect.

Ms. Heimes stated she felt it was a lovely design, but she was concerned about breaking an ordinance that was in existence. She said if the ordinance was not right than it needed to be reexamined.

Mr. Curry stated he will discuss the design with the homeowner and whether or not he wanted to pursue trying to get a text amendment to the ordinance. He said he felt as an architect, that by going higher you create a slender element and going wider you create a mass. He said he felt the mass would be more damaging to the neighborhood and the community than to have a tall element that you see past.

RE: Minutes

1. Approval of CZBA Minutes – June 28, 2005

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Regular meeting minutes of December 21, 2004 as submitted. Mr. Sharpe seconded the motion and it was unanimously passed.

RE: Other Business

Mr. Hansen stated the continued petition of Mark Curry will be placed on the August 23, 2005 regular agenda unless Staff is notified that the petitioner wish to pursue some other alternative. He said for clarification Mr. Curry would be looking at a text amendment which would change the limitations under this particular R-1-A classification.

Mr. Day asked Staff that if Dr. Kamaleson decides to pursue the text amendment does he come back to Staff?

Mr. Hansen stated yes. He said he would make an application through Mr. Sebek to amend the text of the ordinance, but he would work with Staff to do that.

RE: Adjournment

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

Respectfully submitted,

James L. Hansen,
Secretary

JLH:ca

