

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

SEPTEMBER 27, 2005

9:00 A.M.

MINUTES

MEMBERS PRESENT:

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

MEMBERS ABSENT:

**Davis Cohen (Excused)
Jimmy Watford (Excused)**

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

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

RE: Called to Order

The Board elected Mr. Day as acting Chairman for the September 27, 2005 meeting.

Mr. Day called the September 27, 2005 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Continued Petition of Michael Butler
B-05-39585-1
5310 Mead Avenue**

Present for the petition was Michael Butler.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a 13 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 a single family residence. The subject property, located at 5310 Mead Avenue, is zoned R-1 (One-Family Residential).

Findings

1. As originally proposed, the petitioner sought a front yard setback variance of 13 feet. The petition was continued from the August 23, 2005 meeting in order to provide the applicant an opportunity to possibly redesign and /or reorient the proposed structure such that a setback variance would not be required. The petitioner has submitted a revised site plan that repositions the proposed structure on the lot. As proposed, a front

yard setback variance is no longer required. However, the new proposal no longer meets the minimum requirements for the rear yard setback. The petitioner is now seeking a 13 foot rear yard setback variance to the 25 foot rear yard setback requirement of the district. Copies of the original and revised site plans are attached for comparative purposes.

2. Section 4-6.1 of the Chatham County Zoning Ordinance requires a minimum 25 foot rear yard setback for residential uses within the R-1 district.
3. The subject property is a standard lot that is presently vacant. The parcel contains 10,000 square feet and measures 100 feet square. The petitioner is seeking a rear yard setback variance in order to construct a single family residence.
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 and 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 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. However, there appears to be ample space on the lot to reorient the proposed structure such that a variance is not required. In the alternative, the proposed garage could be constructed as an accessory building and placed within five feet of the rear property line.

Summary of Findings

All of the conditions necessary for granting a 13 foot rear yard setback variance appear not to

be met.

Mr. Day stated he remembered this petition from last meeting. He said the change basically was what the Board suggested that the petitioner go back and rethink the location of the structure on the lot.

Mr. Hansen stated yes.

Mr. Stewart asked what was behind the lot?

Mr. Butler stated it was a long lot that faced Livingston. He said the house was on one lot and the lot behind his was vacant.

Mr. Butler stated the staff report says relief if granted would not cause any substantial detriment to the public good. He said whether the variance was in the front or back he felt that it would not cause any detriment to the neighborhood. He said he felt it would comply to what was in the neighborhood. He said he talked with his neighbors and they were not opposed to his plans.

CZBA Action: **Mr. Stewart made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based on that the relief would not impair the intent of the zoning ordinance. Mr. Sharpe seconded the motion and it was unanimously passed.**

**RE: Continued Petition of Steven & Taylor Vivian
B-05-39946-1
2 Cornus Court**

Present for the petition was Taylor Vivian.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a six 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 a single family residence. The subject property, located at 2 Cornus Court, is zoned R-1 (One-Family Residential).

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance requires a 25 foot rear yard setback for residential uses within the R-1 district.
2. The petitioner is seeking a six foot rear yard setback variance in order to construct a single family residential structure. The proposed residence is nearing completion. Due to an erroneous setback measurement, the structure has encroached into the required rear yard setback.
3. The subject parcel, located on a cul-de-sac street, is trapezoidal in shape and contains 10,419 square feet. The lot is 104 feet in width at the rear property line, with sides measuring 120 and 83 feet in length. The front property line follows the curvature of the street, but measures approximately 85 feet in a straight line distance.

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.

Although the subject proper try contains more than 10,000 square feet, the parcel is oddly shaped and has a 20 foot wide drainage easement located at the rear of the property.

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

Strict 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 peculiar to the subject property.

d. Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Chatham County Zoning Ordinance.

Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance. The subject property backs to the side and rear yard of an adjoining parcel that is over 340 feet deep.

Summary of Findings

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

Mrs. Taylor Vivian stated in 2004 they bought a fixer-upper in the Isle of Hope area. She said they paid a designer a lot of money to do architectural renderings so it would be up to code. She said they had the property surveyed and it was placed on the survey so it would be correct. She said they discussed the setbacks and were told that everything was fine. In March 2005, they hired a builder and they requested and received their building permit and started construction, which was approximately 60 percent complete. In mid July they got a stop work permit because after they went back to the designer it looked like the setback was not correct on his plans and the way the surveyed was drawn. She said it has been a hardship because they have all their furniture in storage, paying two mortgages, and they could not live in the house until it was finished. She said if the Board did not grant the variance they would have to tear down the addition.

Mr. Stewart asked if the house was being remodeled?

Mrs. Vivian stated yes.

Mr. Stewart asked if the corner where they were requesting the appeal a porch at one time?

Mr. Vivian stated the appeal for the variance was on the addition for the master bedroom. He said they made it parallel with the den that was already existing. The setback for the 6 feet was on the right hand side of the plans that the Board was looking at where it was the master bedroom.

Mr. Stewart asked if that was a porch at one time?

Mr. Vivian stated no, it was the backyard area.

Mr. Stewart asked if the ditch was a County drainage easement?

Mr. Vivian stated he did not know. He said their property line was on the opposite side of the 20 foot easement ditch.

Mr. Murphy asked if it was a functional drainage ditch?

Mrs. Murphy stated she has not seen any water in it unless it rains. She said she asked her neighbors and they told her that since they have lived there and some have been there as far back as 1960 they have never flooded.

Mr. Stewart stated his concern was sometimes people like to build to close to the property line. He said as a result it sometime hinders emergency services from being able to access the property.

Mr. Vivian stated they were going to remove the chain link fence and put up another privacy fence where it would butt up against the two pine trees that were in the backyard. He said there will be at least 3 feet or 4 feet around the corner.

Mr. Day stated he also was concerned about and one of the things that they would have to do if the Board grants the petition is make way so that emergency services can get around to the back of the house. He said if there was an accident of some particular type they could not have a situation where emergency services could not get into the backyard.

CZBA Action: **Mr. Stewart** made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based on that the relief would not impair the intent of the zoning ordinance, subject to the following condition: That a service access gate be provided along either side of the primary structure of the petitioner's choosing. Said gate is to remain unblocked to afford emergency access to the rear of the property. **Mr. Sharpe** seconded the motion and it was unanimously passed.

RE: **Petition of Tony R. Phillips**
B-05-37157-1
27 Hardee Drive

Present for the petition was Matthew Bush, Attorney for Tony Phillips.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a 25 foot marsh setback variance to the 50 foot marsh setback requirement and approval of a ten foot riparian setback variance to the 35 foot riparian setback requirement of Section 4-12 of the Chatham County Zoning Ordinance in order to construct a swimming pool. The subject property, located at 27 Hardee Drive, is zoned R-1 E-O (One-Family Residential Environmental Overlay).

Findings

1. Section 4-12(f) of the Chatham County Zoning Ordinance requires that a minimum 50 foot setback from the marsh line and that a minimum 35 foot riparian setback from the marsh line be established for properties upon which existing structures existed at the time of adoption of the Environmental Overlay District (November 16, 2001). Setback requirements for both the marsh and riparian buffer are established at 25 feet if the parcel was vacant at the time of adoption of the Overlay District. The existing residential structure was constructed on the lot prior to adoption, thus the more stringent requirements apply.
2. The petitioner is proposing to construct a swimming pool measuring approximately 36 feet by 16 feet in the rear yard. As proposed, the development would need variances from both the marsh and riparian setback requirements.
3. The subject property is trapezoidal in shape, measuring approximately 86 feet along the front, 182 and 184 feet along the sides, and approximately 105 feet along the rear. A residential structure is currently built upon the lot and is setback from the front property line approximately 35 feet at its closest point.
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.**

Though somewhat irregular in shape (trapezoidal), the parcel contains approximately 33,100 square feet and has no extraordinary 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 above are peculiar to the subject property.

- d. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Chatham County Zoning Ordinance.**

Relief, if granted, would not cause substantial detriment to the public good. The purpose of the marsh and riparian setback is to protect the natural wetlands, stream beds and rivers from man-made encroachments that might exacerbate runoff conditions and inadvertently pollute said waterways.

Summary of Findings

All conditions necessary for granting a 25 foot marsh setback variance and a 10 foot riparian setback variance appear not to be met.

Mr. Sharpe asked how far was the pool line from the buffer?

Mr. Hansen stated the pool would be 25 feet away from the marsh setback line.

Mr. Day stated this seemed like a rather large lot. He asked if there was another location or ample room to move this structure back beyond the setback line?

Mr. Hansen stated he felt there was, but as he mentioned the pool was approximately proposed to be in this location. He said the house sits appropriately towards that front of the lot. He said there was also a substantial rear yard. He said he felt there was probably a location(s) on the lot that would not necessitate the variance. He said he understood the petitioner's desire to place it closer to the rear to provide a larger play area or larger back yard. However, he felt there were probably areas where it could be located.

Mr. Stewart stated he felt the ambience would be destroyed if the pool was placed further back. He said it was well situated on the lot and pushing it back 50 feet would be pushing it to the front door of the house.

Mr. Bush, Attorney, stated they submitted a diagram of how the pool would look. He said as noted, it was within the 25 foot setback. He said his client has discussed this with various people and DNR had no objection with it being within the 25 foot setback. He said besides appearance and safety of not having the pool against the house is because his client's septic tank and the Health Department advised that they preferred to have it further back because of the drain field.

Mr. Day asked where was the drain field on the site?

Mr. Phillips stated it was in the back of the site. He said he was going to put the pool closer to the house, but the drainage problems and there are French drains in the yard now because it was a low lying area. He said when he had Mr. Daly to come out and look it they talked about the septic fields and he said that he also preferred him to get a 25 foot setback because it would save his septic field. He said his septic field runs 10 feet from the house and it has to be another 10 feet or 15 feet from the pool, which takes up the entire backyard for the size house he has. He said that was the reason he was putting it there because they needed to save the

septic field. He also stated that on his approved permit that states 25 foot setback and circled.

Mr. Sharpe stated the Board has had a couple of similar petitions before them it seemed like in the last few years. He said he felt this petition was the least intrusive with everything the Board has seen before. He said this petition was not impacting the bulkhead and from the petitioner's testimony there was no other place to put it.

CZBA Action: Mr. Sharpe made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based on that the relief granted would not impair the intent of the zoning ordinance.

Mr. Day stated the Board has recently disapproved a setback on a pool in a yard. He said one of the reasons the Board disapproved that was from his perspective there were other places to on the property that it could have been placed. He said he did not want the general public to think the Board was just disregarding the setback rules for a pool, because they were not. He said he felt it was important that the petitioner understood if the Board grants the petition it was for the right reasons because there have also been some that have not been approved for the right reasons.

Mr. Phillips stated he also talked with his neighbors and they did not have a problem with it. He said one of his neighbors was also present.

CZBA Action: Mr. Stewart seconded the motion and it was unanimously passed.

**RE: Petition of David Rock, Annette Rock
B-05-60174-1
28 Hardee Drive**

Continued per Staff's request.

RE: Other Business

1. Election of Officers – Chairman and Vice-Chairman for 2006

Mr. Day asked the Board if they wanted to wait to do election of officers until they had a full Board?

The Board agreed to wait.

2. Terrance Murphy

Mr. Hansen introduced Mr. Terrance Murphy to the County Zoning Board. He said Mr. Murphy was appointed to the vacancy that the Board has had for many years. However, a vacancy still remains on the Board with the passing of Mr. Lee. He said he was working with the County Commission to get another appointee. He said he has also noted to the County Commission that terms for several Board members have expired, but were continuing to serve because the Bylaws say that you will continue to serve until someone is appointed to take your place as long as you were willing to serve.

Mr. Day stated there were several Board members that were currently on the Board and their terms have expired that have said at least to him if their name was put forth to the County Board

that they would take a new term. He said he felt that also needed to be explored.

Mr. Hansen agreed. He also stated the Board has been named as parties to a lawsuit filed by the Werntz's. The property in 2001 on Wilmington Island they had applied for a variance to subdivide a lot and create two substandard lots, which was granted. He said there was a clause included in that that said it expired within 1 year if they did not do anything. He said it came back and the Board considered it numerous times. It was determined that the Board did not have the authority and the last action was in fact to deny their request. Subsequently, the Board was sued by the Werntz's and that lawsuit has now been dismissed. He said the Werntz's sold the property.

Mr. Stewart stated if he remembered correctly the confusion was that the City Board of Appeals limits their ruling to 1 year and the County did not. He said he felt the City's way of doing it was better.

Mr. Hansen stated the problem stemmed from the fact as with a lot of things we do we have certain templates that we use when we are doing these types of decisions or preparing reports. Inadvertently, that was included although there was never any discussion on the Board about having that time limit. He said the Board would not see those in either the County or City decisions. Once the Board grants a variance, that variance runs with the property. He said where it is used is for use permits, for example a childcare center.

Mr. Sharpe asked if the legal language could be put in that it the Board could grant this for a period of not to exceed 1 year?

Mr. Hansen stated the Board has that ability to do that. He said what he was saying was that it as not something that is applied routinely. He said the Board has the ability to apply certain contingencies or conditions and they would have to tie it such that if they granted, for example a setback variance that construction would have to start. You could not say that the variance was only good for two years and then at the end of two years make them come back after they have built their house.

Mr. Day stated he felt it needed to be done on a case by case basis. He said rather than a blanket thing on the template because there were certain situations that it would not apply. He said he also agreed that in certain situations that there needs to be some kind of time period for the variance to be in effect.

Mr. Stewart asked if it could be a part of the application where they could request an extension automatically when its initially applied for? He said it could be something such as a house that is not designed or my spouse can not make up their mind and then it could be extended for at least two years because one year would be automatic.

Mr. Day stated he felt the problem with that was somebody would forget.

Mr. Sharpe stated it could be a check box may be.

Mr. Sebek stated in the ordinance it says building permits are good for 6 months and if they are not acted on within that time may be extended for cause which is what the Board was talking about.

Mr. Day asked Staff if he would talk with Mr. Hart, County Attorney, to see if there was anything

in the zoning guidelines that would keep the Board from making a motion and doing a resolution that would asks Staff to put some kind of a time limit on the letter that goes out to the folks that officially tells them that their petition has been granted.

Mr. Hansen stated he would check with Mr. Hart about that, although he suspects that his response would be something along the lines that if the Board conditions it then it is there. He said he suspects that Mr. Hart would say that the Board needed to do place it on each motion as opposed to just a blanket.

Mr. Sharpe stated he would rather have the option as opposed to giving it to everybody.

Mr. Day stated the Board could wait until the full Board is present and they could discuss it further.

Mr. Hansen stated it could be listed on the agenda next month as an official discussion item.

RE: Adjournment

There being no further business to come before the County Zoning Board of Appeals, the meeting was adjourned approximately 9:50 a.m.

Respectfully submitted,

Jim Hansen,
Secretary

JH:ca