

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

DECEMBER 20, 2005

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Jimmy Watford, Chairman
Davis Cohen, Vice Chairman
Steven Day
Greg Hirsch
Wayne Noha**

MEMBERS ABSENT:

**Terrance Murphy (Excused)
Robert Sharpe (Excused)**

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

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

RE: Called to Order

Mr. Watford called the December 20, 2005 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

RE: Regular Agenda

**RE: Petition of Bart Redmond
B-051121-58164-1
20 Sapphire Island**

Present for the petition was Ms. Molly Mainor, Owner.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a ten foot marsh setback variance from the 50 foot marsh setback requirement of Section 4-12.f.(1) of the Chatham County Zoning Ordinance in order to construct an addition onto an existing single family residence. The subject property, located at 20 Sapphire Island Road, is zoned R-1/EO (One-Family Residential/Environmental Overlay District).

Findings

1. The subject property 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 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. The petitioner is requesting a ten foot variance to the marsh setback requirement.

2. The subject parcel is oddly shaped, generally following the salt marsh line established by and claimed by the State of Georgia. The parcel contains in excess of 14,000 square feet, being approximately 70 feet wide and 167 feet deep at its extreme.
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 (DNR). On the petitioner's property, the marsh limit has been "flagged" by the DNR and is, at its' furthest point, some 18 feet from the property line. It is from this flag 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 the parcel is oddly shaped, 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.**

Strict application 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 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.**

The marsh setback was established primarily to provide a buffer of pervious land whereby water runoff could be filtered before entering the marsh and other waterways. The Environmental Overlay Ordinance requires a 50 foot setback for lots of record upon which a residential structure was located at the time of adoption (May, 2001) and a 25 foot setback for lots of record that were vacant at

the time of adoption. The requested relief, if granted, would not appear to impair the purposes and intent of the Chatham County Zoning Ordinance as a 40 foot plus buffer would remain intact.

Summary of Findings

All of the conditions necessary for granting a ten foot marsh setback variance appear not to be met.

Mr. Day stated because of the odd shaped lot, where does the point exist where you would get into the setback? He asked if it was because of the odd shaped lot?

Mr. Hansen stated yes. He said if there was a straight line across the back they still may be at this point slightly. However, it was primarily because of this rather odd shaped. He said he also had not scaled it, but it would be his opinion that they would still be within one foot or two.

Mr. Cohen stated he wondered the same thing. He said if you were to draw the line straight across the back then they would not be in violation of the setback. He said it was because it inclined in to the building lot that made it less than the 50 foot setback.

Mr. Day stated from the overlay map it showed that was in fact what was causing it.

Mr. Hansen stated this was the existing structure. The proposed addition was right here. He said this distance from this point to the DNR line was 40.13 feet and this distance to the DNR line was 40.83 feet. He said if this was squared off there still would be a necessity to have a variance at that location, but it would be lessened over here.

Mr. Day stated the point would be on the angular line probably would not be within that, but you would still have the problem on the left hand side.

Mr. Hansen stated yes.

Mr. Noha stated he visited the site a couple of times. He said on the right hand side of the property they were within 20 feet of the marsh and they have a large backyard. He said compared to the neighbors on the left side and across the street they had more land.

Mr. Day stated the Board has been through this several times with this .5 and 50 foot setback and he had no idea why they did that.

Ms. Mainor stated she hoped the Board would take into consideration the point mentioned about because they were an existing home they were given a different set of rules and they would not be any closer. She said they if someone was building a new house across the street they could be 25 feet from the marsh. She said they were asking to build within 40 feet of the marsh. She said it would be a mother-in-law suite and she (petitioner) did not want to move.

Mr. Cohen stated the Board was not here as a Board to go behind the DNR and their setbacks. He said they also were not here to go behind the Chatham County Commission and the ordinance. He said she needed to give the Board a good reason as to why the Board should grant the variance. He said it was the Board's job to enforce the ordinance and rules of Chatham County. He said she needed to give the Board a good reason, hardship, or anything like that as to why they should grant the petition.

Ms. Mainor stated if he visits the site he would see that there were homes right up on the marsh. She said they were very far back. She said she was saying that there was a lot of building on their street where there were right on top of the marsh and they were just asking to be within 40 feet.

Mr. Bart Redmond...(inaudible).

Mr. Cohen asked why were they asking for 10 feet if all they needed were 8 feet. He said the closer they got, the less intrusion it would be.

Mr. Redmond...(inaudible).

Mr. Hansen stated included in the Board's packet was one letter of support from a neighbor. He said he has not heard anything from neighbors. He said he was not saying that their silence indicated a lack of opposition or conversely meant support, but for what it was worth they have had no comments from anyone on this particular request.

Mr. Day stated the Board has struggled with this situation a number of times and he understood where Mr. Cohen was coming from. He said he really struggle with this situation where he believed that whoever has come up with this guideline of 50 feet on a house that was existing versus 25 feet on a new house has placed an unusual hardship on those folks who live in existing homes. The marsh setback was not going to go any place and the house was not going to go any place. He said for them to say that you have to have 50 feet because your house is there he felt was unfair when someone could come in and take a completely blank lot and build within 25 feet of the setback. He said in this situation he did not believe to strictly adhere to the guidelines of the 50 foot setback was the appropriate thing to do.

Mr. Cohen asked the petitioner if they would modify or amend their petition for an 8 foot setback instead of 10 feet?

Mr. Redmond stated yes...(inaudible).

Mr. Noha asked if he had a building permit in hand?

Mr. Redmond stated yes.

Mr. Day stated they will issue a building permit if you were within 10 feet of the marsh setback because they really did not look at that or enforce it. He said he felt it was a sharp builder inspector who said that they would need a marsh survey because a lot of times that does not happen. He said he wised that someone would take and review this guideline and give the Board some really solid reason why this 50 foot setback guideline was in place for existing homes where they allow 25 feet for new homes.

Mr. Hansen stated this afternoon there will be hearing which would probably be the first of many to discuss the eventual adoption of a new general plan, associated zoning ordinances and so on to implement those plans. He said this very item was one of a long list of items to be reviewed.

Mr. Day stated Mr. Cohen was correct in that property owners should come to the Board and say here is the reason I want to do this. He said the fact that no one can sit or stand here and

say this is the reason the 50 foot is here or the 25 foot is here, he felt the Board should at least have some latitude in this situation where they could allow people to intrude into the marsh setback on the 50 foot setback.

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

Mr. Cohen asked Mr. Day if he would amend the motion to include that the variance be an 8 foot variance instead of a 10 foot variance.

Mr. Day accepted the amendment.

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals deny the petition as submitted, and approves an eight foot marsh setback variance based on a finding that the relief requested would not cause substantial detriment to the public good.**

Mr. Redmond stated they were struggling over 3 feet.

Mr. Day stated no, 10 feet.

Mr. Redmond stated he did not understand why he would had to go back and get a surveyor to stamp all this again for 3 feet. He said he had it clearly delineated on the plans.

Mr. Day stated he was not saying that he had to have a surveyor change it. He said all the Board was saying was that they were willing to make a motion to grant the petition for an 8 foot setback. He said the Board may not be willing to make a motion to grant their petition for 10 feet.

Mr. Noha withdrew his second.

CZBA Action: **Mr. Cohen seconded the motion.**

Mr. Watford stated he made a statement earlier that they were only using 8 feet instead of 10 feet.

Mr. Redmond stated he may have over spoke because he noticed on the plans that the surveyor had 40.3 feet, so they were using 9'6".

CZBA Action: **Mr. Cohen called for the vote and it was unanimously passed.**

RE: Minutes

1. Approval of CZBA Minutes – November 1, 2005
2. Approval of CZBA Minutes – November 22, 2005

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Special Meeting Minutes of November 1, 2005 and the regular meeting minutes of November 22, 2005. Mr. Noha seconded the motion and it was unanimously passed.**

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 9:30 a.m.

Respectfully submitted,

James L. Hansen,
Secretary

JLH:ca