

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

AUGUST 22, 2006

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Jimmy Watford
Steven Day
Terrance Murphy
Wayne Noha**

MEMBERS ABSENT:

**Davis Cohen, (Excused)
Greg Hirsch, (Excused)
Robert Sharpe, (Excused)**

TECHNICAL STAFF PRESENT:

**Robert Sebek, Chatham County Inspections
Department**

MPC STAFF PRESENT:

**Deborah Burke, Assistant Secretary
Christy Adams, Administrative Assistant**

RE: Called to Order

Mr. Watford called the August 22, 2006 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Petition of Michael W. Sharpe
B-060727-49847-1
7203 A & B Johnny Mercer Blvd.**

Continued per Petitioner's request.

**RE: Petition of Alan & Rhonda Kinney
B-060801-37779-1
41 Mulberry Bluff Drive**

Present for the petition was Mark Curry, Architect.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 13 foot marsh setback variance to the 50 foot marsh setback requirement of Section 4-12f(1) of the Chatham County Zoning Ordinance in order to construct an addition to an existing single family residence. The subject property, located at 41 Mulberry Bluff Drive, is zoned R-1/EO (One-Family Residential/ Environmental Overlay).

Findings

1. In February of 2006, the Board acted to approve an application for a 12 ¼ foot marsh setback variance for the subject property in order for the petitioner to construct a swimming pool (MPC File No. B-060130-42214-1).
2. 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 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. A residential structure was constructed and occupied on the lot prior to adoption, thus the more stringent requirements apply.
3. The subject property is considered a standard lot, being slightly more than an acre in size. The northwest property line is somewhat irregular in shape as it follows the profile of a natural drainage channel. The existing residence is set back approximately 190 feet from the front property line, and approximately 70 feet from the rear property line.
4. The petitioner is requesting a 13 foot variance from the required 50 foot marsh setback buffer in order to construct an addition to an existing residence. The proposal includes the demolition of an existing golf cart garage and its replacement with a new single car garage, which will serve as a pool bath and grill area with a bonus room above.
5. 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, the parcel is over one (1) acre in size, 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. However, the petitioner would not be able to construct the addition as proposed.
 - c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described 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 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. As proposed, the addition would be approximately 37 feet from the marsh line, some 13 feet in excess of what would be required if the site were vacant.

Summary of Findings

All of the conditions necessary for granting a 13 foot marsh setback variance from the 50 foot marsh setback requirement appear not to be met.

Mr. Curry stated the homeowners were looking at a master plan that included the pool which was granted a variance by the Board and the garage addition which had not been granted a variance. The addition was included on the master plan when the petitioner's originally came before the Board as future structure. He said the homeowner's were now seeking to also get a variance on the addition. He said the location of the structure on the property was positioned to save an existing tree that was towards the rear. He said they were utilizing a part of the existing paved area which was part of the driveway. The square footage was 169 square feet of which 129 square feet was already driveway. He said they were asking for the small piece that was undisturbed.

Mr. Day stated this was a situation that has come before the Board on numerous occasions where the existing property required a 25 foot setback and new property required a 50 foot setback. He said from his perspective he felt this was an inequity. He said the Board has also asked Staff to write a letter to the County Commission to reexamine this situation because they felt it was not quite right for people to have to come before the Board when they were trying to renovate or add to an existing house and people who were building a new structure did not.

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based upon a finding that the relief granted would not cause substantial detriment to the public good. Mr. Murphy seconded the motion.**

Mr. Noha stated Ms. Kinney was his cousin.

CZBA Action: **Called for the vote and the motion was passed.**

**RE: Petition of Mark Ward
 B-060801-37914-1
 18 Shad River Road**

Present for the petition was Mark Ward.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a nine (9) foot front yard setback variance to the 20 foot front yard setback requirement in order to construct a single family residence. The subject

property, located at 18 Shad River Road, is zoned R-1/EO (One-Family Residential/Environmental Overlay).

Findings

1. Section 4-6 of the Chatham County Zoning Ordinance requires a minimum front yard setback of 30 feet for parcels in the R-1/EO district. However, in December of 1990 the Metropolitan Planning Commission acted to approve the Brevard Point Subdivision plat with a front yard building setback variance for all the lots, establishing the front yard setback requirement at 20 feet.
2. Per the petitioner’s survey, the subject parcel is approximately 144 feet deep on the western property line and 160 feet deep on the eastern property line. The lot width is approximately 80 feet. The subject property is approximately 12,000 square feet in size and is considered a conforming lot of record.
3. The petitioner is seeking a nine (9) foot front yard setback variance in order to construct a single family residence within 11 feet of the front property line.
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 pertaining to the subject 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 district would not cause an unnecessary hardship.
 - c. **Such conditions are peculiar to the particular piece of property involved.**
 The conditions described 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 most likely not cause substantial detriment to the public good.

Summary of Findings

All of the conditions necessary for granting a nine (9) foot front yard setback variance appear not to be met.

Mr. Sebek stated a permit was issued based on the fact that the petitioner would not need a marsh buffer or setback. He said when Inspections received the footer drawings showing the encroachment in the front they issued a stop work order until it was resolved. He said one of the properties has been permitted and one has not. He said it also was encroaching into the easement which was something the Board could not grant a variance.

Mr. Mark Ward stated the marsh claimed about 75 percent of the lot on Shad River Road. The road had a 50 foot right-of-way and there were less than 20 houses on the road and it dead-end. He said their property pins from the edge of the pavement was 15 feet from the property pin. He said staying 25 feet off the marsh only gave him at least 18 feet for a house. He said if he used all of the lot and came off the side setbacks which were only 5 feet, it would give him 1,260 square feet of buildable lot. He said the neighbor to the left was 11 ½ feet from the property line.

Mr. Charles Buie, II (20 Shad River Road) stated they were staying in line with the neighbors on both sides. He said there were 20 houses on the street and it dead ends. He said everyone had 12 to 15 feet of grass which was technically the road. He said every house on the street encroached on the back on the marsh. He said every house encroached on the front either with the house itself or the concrete landing to enter the house. He said they would have liked to have a bigger house to go along with the homes in the neighborhood, but they were trying to stay in line with the street.

Mr. Day asked how would they get past the easement?

Mr. Ward stated there was a utility easement and then a 5 foot building setback. He said utilities have been marked and none was within their footers.

Mr. Day stated they could not be in the easement and the Board could not grant them a variance for the easement.

Mr. Ward stated they talked with Mr. Druiry, County, and he told them they had to come to the Board.

Mr. Sebek stated Public Works may be able to vacate part of an easement, but they would need something in writing from them. He said Mr. Druiry, Public Works, may have been referring to a part of the setback. He said if all the other homes were built like that similar to North Street then he (Mr. Sebek) could grant a variance to the front setback if it showed that all the other homes were at that point. However, with regards to the easement it would have to be addressed by Public Works.

Mr. Day stated in essence what has to happen is that the City have to give them that land.

Mr. Sebek stated he will contact Mr. Druiry (Public Works) and find out where the applicants were with this in regards to the easement. Also, if the petitioners had made it known to him that all the other homes were set like this there was a provision that said the Zoning Administrator

could adjust a front setback and he could have handled it to that point. He said until today, he did not know the other homes were built like that.

Mr. Day stated Mr. Sebek has indicated that he has the authority to change the setback requirements when all the other houses were in alignment. He said rather than the Board voting yes or no on both of these petitions, let Mr. Sebek handle the petitions from his position and then if there was something that he could not handle then they could come back to the Board.

Mr. Sebek stated okay, but the easement was a separate issue. He said on the other lot it should not be a problem because it did not encroach into the easement. He said he would try to follow-up on these issues within the next couple of days in which he would visit the site to look at the other properties and also get in contact Mr. Druiry in Public Works.

Mrs. Burke stated the Board may want to continue the petition which would allow the petitioner the opportunity to come back before the Board if needed.

Mr. Ward requested a continuance.

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

RE: Petition of Charles W. Buie, II
B-060801-38022-1
20 Shad River Road

Present for the petition was Charles Buie, II.

Mr. Buie, II requested a continuance based on testimony with regards to 18 Shad River Road.

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

RE: Minutes

1. Approval of CZBA Minutes Special Meeting – July 6, 2006
2. Approval of CZBA Minutes – July 25, 2006

CZBA Action: Mr. Noha made a motion that the Chatham County Zoning Board of Appeals approve the Special Meeting minutes of July 6, 2006 and the Regular Meeting minutes of July 26, 2006 as submitted. Mr. Day 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 9:40 a.m.

Respectfully submitted,

Deborah Burke,
Secretary

DB:ca