

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

DECEMBER 19, 2006

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Wayne Noha, Chairman
Terrance Murphy, Vice-Chairman
Davis Cohen
Steven Day**

MEMBERS ABSENT:

**Greg Hirsch, (Excused)
Robert Sharpe, (Excused)
Jimmy Watford, (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. Noha called the December 19, 2006 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Continued Petition of Mike M-Khepieson
B-060925-54365-1
501 Queen Aire Drive**

Present for the petition was Mike M-Khepieson and Clyde Thompson, Attorney.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 15 foot marsh setback variance to the 50 foot marsh setback requirement of Section 4-12(f) of the Chatham County Zoning Ordinance in order to construct two single family residences. The subject properties, located at 501 Queen Aire Drive, are zoned R-A/EO (Residential- Agriculture/ 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 be established for lots upon which structures existed at the time of adoption of the Environmental Overlay District (November 16, 2001). The setback requirement for the marsh buffer is established at 25 feet if the existing lot of record was vacant at the time of adoption of the Overlay District. These are two newly reconfigured lots and, therefore, the more stringent standard applies. One parcel (Lot 8)

has an existing structure which, regardless of whether the lots are reconfigured or not, would be subject to the more stringent standard.

2. The subject properties are considered substandard lots, each being less than the required 30,000 square feet by approximately 8,000 square feet. Variances for the lot area are not necessary, as the lots are existing nonconforming lots of record. Both lots are irregularly shaped.
3. The petitioner is requesting a 15 foot variance from the required 50 foot marsh setback buffer in order to construct two single family residences within 35 feet of the marsh 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.**

The parcels are currently nonconforming lots in regards to lot area and are both irregularly shaped. The proposal is simply to reconfigure the nonconforming lots.

- 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, it is likely that other variances would be required in order for residences to be constructed on these parcels.

- 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. If the lots had not been reconfigured, one of the lots would only be subject to the 25 foot marsh setback requirement as it is a vacant lot (Lot 9.)

Summary of Findings

All of the conditions necessary for granting a 15 foot marsh setback variance for two lots appear not to be met.

Mr. Cohen asked Staff for clarification of the staff report when it says that it may be likely that other variances would be required in order for residences to be constructed on these parcels?

Mrs. Burke stated if the petitioner was not granted a variance for the marsh setback there would probably be other variances that would be required for may be the front yard setback from having to pull it forward or for side yard setbacks depending on how the petitioner shifted it on the lot to get it outside 50 feet. She also stated there was a letter of opposition submitted.

Mr. Cohen asked as proposed if the setbacks met the old 2001 standard (25 feet)?

Mrs. Burke stated yes.

Mr. Cohen asked Staff if she talked to Mr. Thomas the neighbor in opposition?

Mrs. Burke stated no. She said there were two gentlemen who attended the November meeting and indicated they probably would not be able to come back. She said staff suggested that they write letters explaining their opposition.

Mr. Thompson, Attorney, stated in its original concept they felt there would not have been any problems. He said they were trying to utilize the land in the best way, so they reconfigured the lots.

Mr. M-Khepieson stated the depths of each lot were very tight. The maximum widths for each lot were 60 feet. He said if they left the setback from the front and back they would not have enough room to build a house. He said he tried to recombine the two lots to create enough room to leave the setback from the marsh line.

Mr. Day asked how wide were the houses that he was proposing to build?

Mr. M-Khepieson stated 45 feet.

Mr. Day asked if the houses were single story or two story?

Mr. M-Khepieson stated one of the houses would be single story and the other would be two story.

Mr. Cohen stated he was concerned that the lots appeared not to be designed for two houses. He said he felt if the lot was used as a single lot he would have enough room to build a house.

Mr. M-Khepieson stated if they treated the lot as a single lot, they would still have the same problem. He said the house would be 45 feet in width and they would have 17 feet from the back side and 35 feet from the front. He said they tried to recombine the lot but they would have to leave enough area for the drain field because they had two septic tanks. Also, there were two different owners to the lots.

Mr. Day stated he felt they would still have difficulty building on lot 9 even with 25 foot setback and a house that was 50 feet deep it would be unbuildable. He said lot 9 was the lot that had no house on it that was where the 25 foot setback comes in.

Mr. Sebek stated it would also be difficult to build with a septic system.

Mr. Day stated he felt this was a difficult situation to be able to utilize the lots.

Mr. Cohen stated he was concerned with the neighbor (Mr. Thomas) who has expressed opposition in his letter.

Mr. Day stated he was back to the issue where the Board has talked about it on a number of occasions with regards to the inconsistency of the 25 and 50 foot setbacks which needed to be resolved.

Mr. Cohen asked the petitioner if they had talked with the neighbor (Mr. Thomas)?

Mr. Thompson, Attorney, stated no. He said this was the first that they knew of any opposition.

Mr. Cohen stated he felt may be the petition could be continued so that the petitioner could meet with the neighbor and address their concerns.

Mr. Thompson, Attorney, agreed to a continuance.

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.

**RE: Petition of William E. Baran
B-061121-57339-1
153 Hampshire Road**

Present for the petition was William Baran.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 12 ½ 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 single family residential structure. The subject property, located at 153 Hampshire Road, is zoned PUD/EO (Planned Unit Development/ Environmental Overlay).

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance requires a minimum rear yard setback of 25 feet.
2. The subject parcel is rectangular in shape, with a width of approximately 120 feet and a depth of approximately 137 feet. The parcel is a conforming lot of record.
3. The petitioner is seeking a 12 ½ foot rear yard setback variance in order to construct an attached garage/ storage addition onto an existing single family residence within 12 ½ feet of the rear yard 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 this parcel. The subject property is considered a conforming lot.

- 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 12½ foot rear yard setback variance appear not to be met.

Mr. Baran stated they purchased the property for an in-law suite to be used by either his parents or his wife’s parents. He said when they moved his dad in they realized that the suite was very nice but there was no place for him to park his car or store some extra things that he had. He said he engaged an architect to draft some plans for storage. He said if they did not attach it to the house they could go to the 7½ foot easement. He said they felt it made more sense to allow more room and their neighbors felt it would be more aesthetically pleasing if it was attached.

Mr. Cohen asked if the garage would be converted into anything other than storage?

Mr. Baran stated no. He said they would like to add a sink for cleaning purposes.

Mr. Cohen asked if anyone would live in the garage?

Mr. Baran stated no. He said he provided all his neighbors with packages so they would be aware of what they wanted to do. He said as far as he knew the neighbors were fine with their petition.

Mr. Lesley Brooks (neighbor) stated he received a packet from Mr. Baran. He said he was concerned about the height of the construction. He said he wanted to know if it was one story or two story.

Mr. Baran stated it would be one story with attic space.

Mr. Brooks asked if there was a window on the rear?

Mr. Baran stated yes.

Mr. Brooks stated he was not opposed to the petition but if possible he would like for the petitioner to consider not having the window because if someone was there they would be able to look directly down in to his yard.

Mr. Day suggested that the petitioner eliminate the window and add a skylight.

CZBA Action: **Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the petition with the condition that the window on the second floor be removed based upon a finding that the relief granted would not cause substantial detriment to the public good. Mr. Cohen seconded the motion and it was unanimously passed.**

**RE: Petition of Richard Brown
B-061121-57428-1
2055 Westlake Avenue**

Present for the petition was Richard Brown.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 21 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 single family residential structure. The subject property, located at 2055 Westlake Avenue, is zoned R-3 (Multi-Family Residential).

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance requires a minimum rear yard setback of 25 feet. Per the applicant's site plan, it appears as though the existing structure encroaches into the required rear setback five (5) feet.
2. The subject parcel has a width of 60.5 feet at its narrowest point and approximately 91 feet at its widest point. The lot depth is approximately 70 feet at its shallowest point and 100 feet at its widest point. The parcel is a conforming lot of record.
3. The petitioner is seeking a 21 foot rear yard setback variance in order to construct an addition onto an existing single family residence within four (4) feet of the rear yard 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.

Although the subject property is considered a conforming lot, it is somewhat irregular in shape due to the fact that a portion of the lot has been acquired for street right of way. In addition, the existing structure appears to be within the required setback.

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 21 foot rear yard setback variance appear not to be met.

Mr. Brown stated when he bought the house he added the room on the front. He said a lot of the construction was done prior to him purchasing the house. He said he was trying to fix what he felt was not done properly to the house.

Mr. Noha asked if the concrete fence that was behind it was on the other side of the 15 foot alley?

Mr. Brown stated yes.

Mr. Cohen stated he was concerned at the large amount for the setback.

Mr. Brown stated after he bought the property he went to the Engineering Department and asked if he could get the right-of-away to the alley, but they said no.

Mr. Noha asked if he will live in the structure?

Mr. Brown stated yes.

Mr. Sebek stated they had numerous property violations at this site before Mr. Brown purchased it. He said it was bought and worked on a couple of times before Mr. Brown and had never been put into a livable state. Mr. Brown bought it may be a year ago and has not added anything onto it other than the front room. He said Mr. Brown bought it with the back room on there. He said he was not sure that inspections knew the back room was on there. He said the permits for the site dated back to 2003 and it had never been completed. He said Mr. Brown bought it under the assumption that it was permitted as it was.

Mr. Cohen asked Mr. Brown if he had anything to do with where the house was placed on the lot?

Mr. Brown stated no.

CZBA Action: Mr. Cohen 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 and it was unanimously passed.

**RE: Petition of John Jason Hux
B-061121-57627-1
10 Shad River Road**

Present for the petition was John Jason Hux.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a seven (7) foot marsh setback variance from the 25 foot marsh setback requirement, and a seven (7) foot riparian buffer variance from the 25 foot riparian buffer requirement of Section 4-12(f) of the Chatham County Zoning Ordinance in order to construct a single family dwelling. The subject property, located at 10 Shad River Road, is zoned R-1/EO (One-Family Residential/ Environmental Overlay).

Findings

1. Section 4-12(f) of the Chatham County Zoning Ordinance requires that a minimum 25 foot setback and 25 foot riparian buffer from the marsh line be established if the existing lot of record was vacant at the time of adoption of the Overlay District (November 16, 2001.)
2. The subject property is approximately 108 feet deep and 81 feet wide, resulting in a lot area of approximately 8,830 square feet. The lot is a conforming lot of record.
3. The petitioner is requesting a seven (7) foot variance from the required 25 foot marsh setback and riparian buffer in order to construct a single family residence within 18 feet

of the marsh 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.**

The parcel is a rectangular shaped, conforming lot of record.

- 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 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.

Summary of Findings

All of the conditions necessary for granting a seven (7) foot marsh setback and riparian buffer variance appear not to be met.

Mr. Cohen asked with regards to number 4 in the staff report, if there were any special conditions?

Mrs. Burke stated they did not see any special circumstances. Typically, what they were looking at with regards to that was if the lot was irregularly shaped. Also, they would look at if the lot was nonconforming lot of record that was smaller or not as wide. She said they also looked at if there was an elevation difference that would cause them not to be able to build. She said from the information the petitioner provided and the information staff have in their system for reviewing applications there was not anything that they saw was a special circumstance.

Mr. Day asked if Staff received any opposition to this petition?

Mrs. Burke stated no.

Mr. Hux stated him and his wife have always wanted to build on Wilmington Island. He said they purchased a lot in Brevard Point in good faith that they would be able to build a home for their family. He said he was not aware that the lot went back into the ditch area. He said going by the distances, he thought 108 feet would be enough room to build a conforming house. However, as the Board could see the rear boundary of the lot was in the middle of the ditch which originally was a mosquito ditch. He said saltwater has since moved in there and the DNR now says that it was salt marsh. He said with the 25 foot buffer it significantly reduced the size of the lot. He respectfully requests a 7 foot variance into the buffer that would conform with the other houses on his street in the neighborhood. The houses north were closer than that to the ditch and most were larger than the house he planned to build.

Mr. Cohen asked if the area filled up with water at high tide? He also asked if the marsh connected to any waterway?

Mrs. Burke stated she did not know if it connected to a waterway. She said they deferred all of those types of questions to DNR. She said DNR tells staff where the marsh line is and where they needed to enforce it.

Mr. Hux stated with regards to if it was tidal where he was back there it was slushy and vegetative. Also, as far as he knew it did not rise at high tide.

Mr. Sebek, Zoning Administrator, stated DNR is talking about changing their marsh regulations. He said there were four or five different kinds of vegetation that they identify as defining a marsh. He said it may be that some of that type of vegetation has gotten in there.

Mr. Day asked the petitioner if they were putting in a garage?

Mr. Hux stated it would be underneath.

Mr. Day asked if he could reconfigure the house to bring it back 7 feet and keep the same square footage?

Mr. Hux stated not that he could think of that would not be to their liking as well as their neighbors.

Mr. Day stated he was thinking of that there was a 5 foot setback on the left hand side. He said he could shove the house over and shorten it up some and eliminate some of the request to get it closer to conformance.

Mr. Noha asked if they already had plans?

Mr. Hux stated yes, they have already paid and made their house plans.

Mr. Cohen stated he was concerned because he felt it was a lot and they should design a house to fit. He said his only question was if this was marsh.

Mr. Murphy stated it also showed a drainage easement so there must be some kind of drainage factor in that it goes some where.

Mr. Noha stated he felt the petitioner needed to keep in line with the other structures in the neighborhood with most being side entrance garages.

Mr. Hux stated his neighbors have told him that they would like for him to have a side entrance garage.

Mr. Louis Valoze stated he has lived in the neighborhood for several years and came before the Board several years ago. He said children walk through the ditch that Mr. Cohen was talking about that runs behind the houses. He said what DNR was calling marsh was solid ground but saltwater has crept in. He said it did not connect to any body of water. He said the marsh grass will keep creeping up into yard areas if you don't cut it back. He said he experienced this himself because his house was built adjacent to a mosquito ditch. When they plotted the lots marsh grass was not in areas that it has now crept into. As far as the ditch area behind their houses it knocked a lot of area off the lots as the years have passed because the marsh grass naturally creeps up. He said it was an area that you could walk through from one street to the next street, which the children do all the time.

Mr. Day asked if he was saying if the petitioner had mowed his grass all the way back to the top of the ditch bank he would not be here today?

Mr. Valoze stated he felt that was what a lot of people do. He said the petitioner has not cleared the lot and has waited for this. He said the lot was in the same state.

Mr. Murphy asked the petitioner if there was any way to move the house?

Mr. Hux stated no, not to his knowledge. He said they worked with what they thought he had with the appropriate number of bedrooms. He said they were limited as it was because they have to build up. He said he did not know that the marsh line was going to be deemed as far in as it was.

Mr. Cohen stated you have hard marsh and soft marsh he would question if this was real marsh. He said it also was not clear that it was associated with a greater marsh ecological system. He said there was no tide rising or falling in the area and it was some kind of mosquito ditch that apparently has gathered some foliage which he felt caused DNR's antenna to go up.

Mr. Day stated he agreed from the standpoint in that he looked at this and saw the foliage several feet from the top of the ditch. He said if the marsh line was at the top of the ditch or into the ditch and they were asking for variances in relationship to that then he would be somewhat uninclined to approve it.

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. Cohen seconded the motion and it was unanimously passed.

RE: Minutes

1. Approval of CZBA Minutes – October 24, 2006

CZBA Action: Mr. Murphy made a motion that the Chatham County Zoning Board of Appeals approve the Regular Meeting minutes of October 24, 2006 as submitted. Mr. Noha seconded the motion and it was unanimously passed.

RE: Other Business

Mr. Noha asked Staff if they could give an update next month with regards to the 25 and 50 foot marsh setbacks?

Mrs. Burke stated she discussed the issue with Mr. Hansen about how they were going to handle that. She said currently Staff was doing comprehensive rewrites to the Zoning Ordinances over the next year or two. She said in her conversation with Mr. Hansen she felt the direction that they were going was to make that a part of the overall ordinance rewrite. She said that would involve a substantial amount of public involvement and interaction with the different groups throughout the community.

Mr. Day stated that Mr. Sharp has not been to a number of meetings. He said he felt that Mr. Hansen or someone from Staff needed to write a letter to his representative on County Commission asking for a new member to be assigned.

Mrs. Burke stated in talking with Mr. Hansen about that several meetings ago, it was her understanding that he has sent a letter and has also talked with Mr. Sharpe about it, but he came to the one meeting. She said that kind of put it to a stop. She said at the last meeting some one mentioned from the Board that they were going to try and call him.

Mr. Sharpe stated he tried to call him but he could not get in contact with him.

Mrs. Burke stated if the Board wanted Mr. Hansen to again initiate that with County Commission they could do that.

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve of Staff sending a letter to Mr. Sharpe. Mr. Murphy seconded the motion and it was passed. Abstaining to the motion was Mr. Cohen.

Mr. Cohen asked if the time for the field trip of the different sites be changed from 10:45 a.m. to 12:30 p.m? He said with the field trips being set in the mornings it was some times hard for him to come.

The Board agreed to change the time to 12:30 p.m.

Mrs. Burke asked the Board if they wanted to discuss their meeting packets?

Mr. Noha stated he had a question with regards to the information that they get in packets. On December 1, 2006 a packet was mailed out and the Board gets a lot more detailed information in the first packet. He said the second packet that was mailed out December 15, 2006 was less information. He said he would like a packet sent out in between those dates with as much as information as Staff have. Therefore, instead of the Board receiving two packets a month they would only receive one packet a month with everything.

The Board agreed that they would like to receive one meeting packet instead of two meeting packets.

RE: Adjournment

There being no further business to come before the County Zoning Board of Appeals, the meeting was adjourned approximately 10:20 a.m.

Respectfully submitted,

Deborah Burke,
Assistant Secretary

DB:ca