

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

JANUARY 23, 2007

9:00 A.M.

MINUTES

MEMBERS PRESENT:

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

MEMBERS ABSENT:

**Greg Hirsch, (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 January 23, 2007 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 petition was continued from the December 19, 2006 meeting at the petitioner's request. She said the neighbor submitted a letter withdrawing their opposition to the petition.

Nature of Request

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. M-Khepieson stated they did not have another solution to place the houses on the lots because the lots were irregularly shaped. He said they met with the neighbor who opposed the petition and he now supports their petition.

Mr. Day asked if this would set within the riparian setback?

Mrs. Burke 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. Day** seconded the motion and it was unanimously passed.

**RE: Petition of W. Park Callahan &
Aline M. Callahan
B-061227-51311-1
84 Shipwatch Road**

Mr. Day recused himself from the petition because he is neighbors and friends with **Mr. and Mrs. Callahan** on Jones Street.

Present for the petition was **Park Callahan & Aline Callahan**.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 38 foot marsh setback variance from the 50 foot marsh setback requirement, and a 23 foot riparian buffer variance from the 35 foot riparian buffer requirement of Section 4-12(f) of the Chatham County Zoning Ordinance in order to construct an addition to an existing single family dwelling. The subject property, located at 84 Shipwatch Road, is zoned PUD/EO (Planned Unit Development/ Environmental Overlay).

Findings

1. Section 4-12(f) of the Chatham County Zoning Ordinance requires a minimum 50 foot setback and 35 foot riparian buffer from the marsh line.
2. The subject property is a triangular shaped lot located at the end of a cul de sac with a depth of 101 feet at its shallowest point and a width of 26 feet at its narrowest point. The lot is a conforming lot of record.
3. The petitioner is requesting a 38 foot variance from the required 50 foot marsh setback and a 23 foot variance from the required 35 foot riparian buffer in order to construct an addition to an existing single family residence within 12 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 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 38 foot marsh setback and a 23 foot riparian buffer variance appear not to be met.

Mr. Callahan stated they purchased the house over a month ago. He said the property was located in the marshes east phase of the Marshes Subdivision on Whitmarsh Island. He said it was a small lot that overlooked the rear on north extensive tidal marsh between Whitmarsh Island and Oatland Island. The property also contained the western-half of a duplex house, the property fronted on a cul-de-sac at the northeast end of Shipwatch Road. He said the property like all the subdivision was situated on fill that was installed years ago before the present regulations protecting the marshes were in place. It was his understanding that the houses in the eastern or newer part where his house was were grandfathered in based on previous planning. He said it was their intent to make minor modifications to the property to reconfigure an existing wood deck so it could contain a small fish pond and add a roof and screening. He said all but 28 square feet of the work would fall within the existing footprint of the house. The fish pond was intended for his wife's collection of coy or Japanese ornamental coy that she has had for a long time. The roof and screening would be a protection for the fish from other predators such as raccoons, cats, or sea birds.

He further stated that all the neighbors had screened roof porches. The houses were built without gutters and downspouts which most of the neighbors have added. He said they also intended to add gutters and downspouts to the new work as well as the original house to

mitigate water runoff. He further stated they felt it would create an unnecessary hardship. Their existing wood deck faced west with no shade or protection from the western sun. It was also open to occasional strong winds from the north blowing across the marsh. He said he felt they acted in good faith. He said they presented their plans to the Homeowner's Association and were approved. He said he applied for a building permit and admit that he started work before the permit was granted because they needed to get the pond constructed as quickly as possible so they could relocate the fish from their temporary location. He said when the permit came back for denial he immediately stopped work until they could get it resolved.

He further stated with regards to the staff report regarding that such conditions were peculiar to the particular piece of property, the changes would be similar to the changes that their neighbors have already made. He said he also felt that denial of the petition could be interpreted as putting an encumbrance on their property, lowering its value and desirability. He said he also felt that doing this would not cause harm or detriment to the surroundings.

Mr. Noha asked what were the dimensions of the deck that would be enclosed?

Mr. Callahan stated 13 X 28.

Mr. Davis stated he was concerned that they built the construction before they made application to the Board.

Mr. Callahan stated although it does not excuse his action but they were worried about the delay that it took to get a permit approved by the County and the effect on their fish that the delay would entail.

Mrs. Callahan stated the deck and the house have been there since 1993. She said they decided to add a roof over the deck because it was not possible to stay there in the summer without some sort of shade. She said they also decided to put a fish pond in the deck so she could bring her collection of coys from her previous residence. She said they asked for permission to put a roof and fish pond from the association and received approval to do it. She said they proceeded to have the fish pond built because the people who built the fish pond said they did not need a building permit. She said they also redid the deck because it was not in a good condition. She said although it was built larger by the contractors they were willing to reduce the size. She said they felt putting a roof over the deck would be more beneficial because water right now falls all over the deck and it was of no use to them in its present state. She said they never thought they were doing something different when all the neighbors have roofs over their decks. Again, the house has been there since 1993 and they were trying to improve what was there.

Mr. Noha asked if they were saying that they enlarged the deck by 1 foot?

Mrs. Callahan stated yes.

Mr. Cohen asked when did they move into the house?

Mr. Callahan stated around January 2007.

Mr. Cohen asked if he was saying that the deck was already in place?

Mr. Callahan stated yes, it was there when they bought the house.

Mr. Cohen stated they were saying that they took the old deck and making improvements to it.

Mr. Callahan stated yes.

Mr. Cohen asked Staff if they had anything to show that the deck was not there when the petitioner moved and made application to the Board?

Mr. Sebek, Zoning Administrator, stated no. He said the issue was not the deck as much as it was the covering over the deck because a wood deck is permitted.

CZBA Action: **Mr. Murphy** 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: Petition of Ronald C. & Terri H. Smiley
B-061228-49157-1
13 Wylly Island Drive**

Present for the petition was Terri Smiley and Charlie Angell.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 27 foot marsh setback variance from the 50 foot marsh setback requirement, and a 12 foot riparian buffer variance from the 35 foot riparian buffer requirement of Section 4-12(f) of the Chatham County Zoning Ordinance in order to construct an addition to an existing single family dwelling. The subject property, located at 13 Wylly Island Drive, is zoned R-1/EO (One-Family Residential/ Environmental Overlay).

Findings

1. Section 4-12(f) of the Chatham County Zoning Ordinance requires a minimum 50 foot setback and 35 foot riparian buffer from the marsh line.
2. The subject property is a regularly shaped lot with a depth of 102 feet at its shallowest point and a width of approximately 126 feet at the front lot line. The lot is a conforming lot of record.
3. The petitioner is requesting a 27 foot variance from the required 50 foot marsh setback and a 12 foot variance from the required 35 foot riparian buffer in order to construct an addition to an existing single family residence within 13 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 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 27 foot marsh setback and a 12 foot riparian buffer variance appear not to be met.

Mr. Day asked how long has the house been there?

Mrs. Burke stated she could not find record of when the house was constructed.

Mr. Cohen asked if noticed was made with regards to this property?

Mrs. Burke stated yes. She said it was advertised in the newspaper and letters were sent to adjacent property owners within 200 feet.

Mr. Cohen stated they visited the site yesterday and he noticed that the posting sign was behind some trees. He said he felt because the sign was behind the trees it would not have afforded notice to the general public.

Mrs. Burke stated she talked with Mr. Hansen about that and their understanding was it just needed to be posted on site. She said it was not that specific in the ordinance.

Ms. Terri Smiley stated she posted the sign and she had pictures to show that it could be seen from the street. She said she understood that there were some bushes that may have blocked the sign from being as visible but it was not done deliberately. She said her neighborhood association was aware of what she was proposing for her property. She said the neighborhood association was waiting for her to come before the Board before she presents to them. She said when she found out the sign was a problem she took a copy of the notice letter that was mailed out from Staff to her three adjacent neighbors (Mr. & Mrs. Javetz, Margaret Pacificy, and

Dr. Brian Redmond) and they all signed that it was okay with them. She said they were proposing to build an addition on the side of their house.

Mr. Charlie Angell, House Doctor, stated the addition his client was proposing would not go out any farther than the existing gazebo. He said they would like to fill in the void to the corner of the gazebo which would encompass a grill, sink, and bathroom. He said his client was also having a fireplace installed that would be done by a masonry. He said the fireplace was the only thing outside the footprint that would bump out. He said they were also changing out the deck surface to stone and they were fortifying the footings. He said they were in no way moving forward this way or any farther towards the marsh.

Mr. Murphy asked if there will be a roof over the addition?

Mr. Angell stated yes.

Mr. Murphy asked if there will be a wall?

Mr. Angell stated there would be something like bahama shutters to allow the air to go threw. The only wall would be around the bathroom.

Mr. Noha asked if there would be gutters installed to divert some of the run-off?

Mr. Angell stated yes.

Mr. Day asked what kind of decking was around the pool? He also asked what kind of flooring was going into this area?

Mr. Angell stated 5/4 X 6 treated decking. He said they would have a stone surface and it will go on a 4½" slab.

Mr. Cohen stated he saw the project as there was no more of an intrusion than what was already there. He said the way it was being constructed was it was not going out in further than what was already there. Also, there was no one out there but the petitioner. He said he also felt the letters that the petitioner had from the adjoining property owners should be made a part of the file.

Mr. Day asked the petitioner where would the run-off be diverted from the gutters?

Mr. Angell stated it would run into the system and run out the left side into the area around the street. He said none of it would go forward.

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 and it was unanimously passed.

RE: **Petition of Jay Patel**
B-061228-49429-1
596 AI Henderson Boulevard

Present for the petition was Clay Loyless and Terry Coleman.

The petitioner is requesting approval of an 85 foot height variance from the 40 foot maximum height permitted, an 88 square foot variance from the 32 square foot maximum area permitted, and a 384 square foot variance from the 60 square foot maximum area permitted of Section 7-3 of the Chatham County Zoning Ordinance in order to construct a freestanding sign with an announcement sign. The subject property, located at 596 Al Henderson Boulevard, is zoned P-B-C (Planned Community Business.)

Findings

1. Section 7.3 of the Chatham County Zoning Ordinance allows a maximum height of 40 feet and a maximum sign area of 60 square feet for a freestanding sign. In addition, the Ordinance allows 32 square feet of sign area for an announcement sign. The Metropolitan Planning Commission has established a policy for the Gateway area that allows signage of up to 100 feet in height and 300 square feet in sign area, with no announcement/ reader board signage.

2. The petitioner is requesting a 444 square foot sign that is 125 foot high, with a 120 square foot announcement sign. The proposed signage far exceeds the Ordinance requirements, as well as the policy established by the MPC.

3. 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 conditions pertaining to subject parcel.

 - 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. The applicant would be permitted to provide signage that is consistent with what is currently in place in the area.

 - 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. However, approval of the request would conflict with the purposes and intent of the Ordinance by allowing signage height and area that far exceeds that which is permitted.

Summary of Findings

All of the conditions necessary for granting an 85 foot height variance, an 88 square foot announcement sign area variance, and a 384 square foot freestanding sign area variance appear not to be met.

Mr. Cohen asked what was the Board bounded by?

Mrs. Burke stated because it was in the planned district they were allowed some flexibility. In most places what they did was hold them to what the ordinance required for that district. She said this was a Planned Community Business. She said what they would look at was what the BC district allows. However, in this area the MPC set a policy in the 1980's that established it at a higher size with more square footage. She said the variance actually needed to be from what the ordinance required, however what the petitioner was asking for was not as excessive in comparison to what was in the area as it would sound if you were looking at what the ordinance required.

Mr. Day stated for clarification purposes the area allowed for 100 feet high and 300 square foot signage. He asked what could the second sign be in that area?

Mrs. Burke stated typically they have allowed 32 square feet.

Mr. Day stated what she was saying was that the petitioner wanted 120 square feet and they normally allowed 32 square feet. He said they wanted 440 square feet and they normally allowed 300. The petitioner wanted 125 feet and they normally allowed 100 feet.

Mr. Cohen asked how did the surrounding signs in the area compare to what the petitioner proposed?

Mrs. Burke stated the majority of the signs in the area were within the policy. She said there was one that was approved November 2005 by MPC because it was in a PUD district. However, the proposed sign was larger than any of the signs in the area. She said she understood that the Board did not set precedent. However, they were concerned of the precedent it would set for that area as well as other areas along I – 95.

Mr. Clay Loyless, Kern Coleman Engineering (Agent for Jay Patel) stated in the Savannah Gateway area there were numerous large signs. The Winngate Hotel, Ruby Tuesday, Clarion Hotel, Comfort Inn all had large signs and was close to the area where Comfort Suites was going to be. He said as mentioned by Staff Hampton Inn in November 2005 had a sign approved for 125 feet high and 380 square feet in surface area. The large portion also had a reader board type sign underneath. He said they were proposing to place a sign that was in character with the sign that was recently approved in that area. He said although the proposed sign may be slightly larger in extent they were asking for a variance from the policy that has been established.

Mr. Day asked how did they come up with 440 square feet?

Mr. Loyless stated that was the standard sign that the manufacturer proposed that they have used in other places.

Mr. Day asked why their sign could not be the same size as the Hampton Inn?

Mr. Loyless stated that was something they could consider.

Mr. Day stated his concern was how big was big enough and how tall was tall enough. He said he felt the guidelines should be adhered.

Mr. Cohen stated he agreed with his colleagues. He asked why was Hampton Inn able to go before MPC for a variance and others come before Board of Appeals?

Mrs. Burke stated her understanding was that if it was zoned PUD (Planned Unit Development) then it went to the MPC because there are no standards for PUD. She said this petition was zoned PBC so you could look at the BC zoning district and determine what standards would apply.

Mr. Terry Coleman, Kern Coleman Engineering, stated he understood the Board's position. He said his client has asked them to pursue approval for a sign that Comfort Suites has provided them. He said Kern Coleman was not the designer of the sign. He said they would ask that the Board consider the 125 feet and they understood the mass issue. He said they got approved for the Hampton Inn 380 square feet which he understood was an MPC decision. In the hotel business they consider signage to be a competitive edge and it becomes an issue for them. He said he also understood that at some point there had to be a maximize size. He said they respectfully request the same for this petition as they received for Hampton Inn.

Mr. Day stated he understood with regards to the competitive edge in the hotel business, but he felt a line had to be drawn which he felt needed to be now.

Mr. Murphy stated if they put the sign up he assumed that they base the mass of the sign on height so it was proportional in that the higher up you went the larger the mass of the sign.

Mr. Coleman stated he was not sure that was directly related. He said they could not be too small or you would not accomplish your advertising effort.

Mr. Murphy asked if it would shrink the mass if they reduced to the regulation height?

Mr. Coleman stated yes.

Mr. Cohen stated he was concerned that right across the street from the petitioner had a different set of limits. He said he felt they should have the same as the Hampton Inn.

Mr. Day stated he understood, but what happens if the next group at the MPC say that 380 square feet was not enough, let's go higher. He said somebody came up with a guideline that said 300 square feet for a sign was large enough, 100 feet in the air was high enough, and 32 square feet was big enough. He said he felt two wrongs did not make a right.

Mr. Cohen stated he felt there needed to be a leveled playing field.

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals approve the petition for 125 feet high, 380 square feet, and 32 square feet.

The motion failed for lack of a second.

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals deny the petition as submitted. Mr. Murphy seconded the motion and it was passed. Abstaining to the motion was Mr. Cohen.

Mr. Plumbley stated based on Mr. Day's comments that he was in favor of the MPC policy being enforced (100, 300, and 32). He said he felt if the Board strictly denied the petition, it did not grant them the 300, 100, and 32.

Mr. Day stated he did not intend to do that.

CZBA Action: Mr. Day amended his motion that the Chatham County Zoning Board of Appeals deny the petition as submitted and approve a 300 square foot sign, 100 feet in height, with a 32 square foot announcement sign. Mr. Murphy seconded the motion and it was unanimously passed.

**RE: Petition of Wayne Noha
B-061228-49808-1
S.W. Corner of Whitfield Avenue &
Mendel Avenue**

Mr. Noha recused himself as he was the petitioner.

Present for the petition was Wayne Noha.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a ten foot front yard setback variance from the 35 foot front yard setback requirement of Section 4-6.1 of the Chatham County Zoning Ordinance in order to construct six single family residential structures in a new subdivision. The subject property, located at the southwest corner of Whitfield Avenue and Mendel Avenue, is zoned R-M-H/EO (Residential Mobile Home/ Environmental Overlay).

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance requires a minimum front yard setback of 35 feet.
2. The subject parcels are a part of the Beaulieu Bungalows Phase 2 Subdivision, which was approved by the Metropolitan Planning Commission in September of 2006 (MPC File No. S-060913-55491-1). The lots vary in size from 6,600 square feet to 8,250 square feet in size. The lots are substandard in size, however, are a result of recombining existing substandard lots into significantly larger lots.
3. The petitioner is seeking a ten foot front yard setback variance for six of the lots in order to be able to construct single family residences within 25 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.

The lots are recently recombined substandard lots. The newly created lots are more conforming than the original lots of record.

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. However, there would not be adequate area available on each lot to provide necessary drain fields for the individual septic systems.

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 ten foot front yard setback variance for six lots appear not to be met.

Mr. Cohen stated the letter the Board received from County Engineering signed by Nathaniel Panther was saying that the 10 foot variance would impact lot 144 in so far as this report was concerned.

Mrs. Burke stated she did not know. She said she felt that was what Mr. Panther was indicating that there could be some issues based on granting that variance.

Mr. Cohen asked if Mr. Panther was present?

Mrs. Burke stated no.

Mr. Cohen stated he felt that was important for the Board to know whether or not the impact would effect the drainage and pavement improvements.

Mr. Day stated the concern he had was if that was going to be an open drainage site or closed.

Mr. Cohen stated he felt that Mr. Panther or someone from County Engineering needed to be here in light of the letter and the case that was before them.

Mrs. Burke stated Mr. Hansen has put in a call to Mr. Panther's office and he was on the way.

Mr. Noha stated he was requesting a front yard setback to allow him to move the buildings closer to Heather Street. He said this would allow for larger back yards and more consistent flow of drain fields. He said the homes that he was proposing to build would all have front porches. He said it was brought to his attention by concerned neighbors that the landscaping was an issue. He said he would agree to more heavily landscaping and was willing to work with the neighbors. He said another concern was the drainage and he was willing to cut an area out to allow the County to have 15 X 25 which would give them 5 feet around what they already had. He said this would not impact the structure or drain fields.

Mr. Day asked if that was lots 114 or 112?

Mr. Noha stated he thought it would be lot 117. He said he felt it would be the beginning of the second lot if you were going east towards Whitfield Avenue from the end of the development. He said he intend to make the homes aesthetically pleasing from the road with front porches. He said he could also build the homes without front porches. He said the zoning also allowed him to put mobile homes in the area at a greater density. He said he would ask for the Board's consideration of his petition. He said the homes would be built and retained by him and his partners. He said they did not intend to sell the homes.

Mr. Cohen asked if he could explain the increased landscaping that he was willing to do?

Mr. Noha stated he did not have any landscaping plans with him, but typical of the area was the Beaulie, Camillas, Azaleas, and Live Oaks.

Mr. Cohen asked Mr. Panther if he could explain the letter with regard to it saying they "*strongly recommend against issuing the variance at this time?*" He said another point that has come up was the granting of a 10 foot variance would only impact the end lot or lot 114 as to the County's drainage and pavement improvements and not the whole project.

Mr. Panther stated the road construction project involved both drainage and paving of Heather Street. He said he did not know if it would be 112 to 114 that would be impacted but there was a 10' X 20' drainage easement which was the concern came from.

Mr. Day asked if it was an open drainage ditch or concrete pipe?

Mr. Panther stated according to the plans it was a reinforced concrete pipe underneath Heather Street. He said it was his understanding that the reinforced concrete pipe drained into an opened ditch.

Mr. Day stated when he visited the site he did not see a ditch in that area.

Mr. Panther stated he has not been involved with the road paving project or drainage project. He said based on the invert elevation shown it looked like the drainage from this area as it went into a small swell, drained across Heather Street and out this way.

Mr. Day stated the slope of the ground towards the collector. He asked if the collector was there now?

Mr. Panther stated he was not sure what has been completed with the project. He said after the Heather Street drainage and paving improvements were complete this was what would be in place.

Mr. Day asked the petitioner Mr. Noha if that was there now?

Mr. Noha stated the County installed the pipe under the road Friday. He said this would be an inlet side to a pipe. He said this was not a ditch and not a maintained ditch. It was the lower part of that land. He said they were installing curb and gutter on this entire street and the proper run-off has been taken care of.

Mr. Murphy asked if this would be concrete?

Mr. Noha stated it was a concrete pipe and that was where it ended. The flow did not come onto this property, it goes away. He said it began here on his property and took it off towards Whitfield Park and the river.

Mr. Day asked since the work was being done in that direction and it did not appear that work was being done in this direction, would that have an impact on this property other than that small 10 X 20 area that they were talking about?

Mr. Panther stated Engineering has not seen a site plan or why the petitioner was requesting the variance. He said the County was trying to protect their drainage interests in that area.

Mr. Noha stated there would be nothing built near the variance. He said he was willing to give the County another 5 foot perimeter around that onto his property if they needed it. He said they have already acquired any and all easements down that road. The project was underway. He said they were putting the pipe in now and should be paved according to the people working on the project approximately within two months. He said he was also planning to put in sidewalks along the front which were not required.

Mr. Day asked Mr. Panther if they strongly recommend that the Board deny the variance for the entire project or do they strongly recommend that they deny the variance for lots 114 and 112?

Mr. Panther stated at this time because they do not have anything submitted to the Engineering Department for review. He said they recommend that the entire variance be denied.

Mr. Cohen stated he felt that Mr. Noha and Mr. Panther needed to get together and see if they could work out the concerns of the County. He said he felt the Board did not want to grant a variance and interfere with the construction phase of the drainage and pavement improvements. But at the same time if it was not going to affect it or if it was going to effect lot 114 and 112 or just lot 114 then they might go ahead and do that. He said he felt there needed to be more communication and study between the petitioner and County Engineering.

Mr. Sebek stated typically a single-family home was not submitted to the Engineering Department for review. He said it may be as a subdivision they would review the site plan of the entire subdivision for drainage and other issues, but they would not typically receive a copy of a single-family home site plan.

Mr. Noha stated it has been addressed and they copied the 10 X 20 for the easement in his letter that was submitted to the Board. He said they understood that was on one of the lots or possibly two lots. He said they also understood that it was a 10 foot maximum from the right-of-way into the lot and he was asking to be no closer than 25 feet. Therefore, at the closest point he would be no closer than 15 feet from the lot. Also, these lots were substandard lots of record. He said they could be built as they were with no variance with smaller homes or mobile homes. He said since they were subdivided lots he did not believe there were subdivision requirements to be studied by Engineering. He said being that they were lots of record they were ready to be built on. The only time drainage came into effect was when you were subdividing and he was recombining.

Mr. Sebek stated he believed Mr. Noha was correct. Typically, a subdivision drainage plan was submitted when the original property was subdivided into lots. He said he was not sure that was required for what Mr. Noha was doing.

Mr. Day asked if he was saying given the existing situation that Engineering may not have ever seen a site plan?

Mr. Sebek stated yes.

Mr. Day asked Mr. Panther if there was a way for them to tell the Board which lots their easement was going to go on?

Mr. Panther stated he felt it would be 114 and 112 but without a scale he could not say for certain.

Mr. Noha stated the numbers 114 and 112 were not lot numbers but the addresses of the property. He said if the Board could approve the rest and not the lots that may be effected he would be agreeable to that.

Mr. Day asked Mr. Panther if he would be willing to meet with Mr. Noha to discuss their concerns?

Mr. Panther stated yes.

Mrs. Helen Stone, County Commissioner for this district. She said she realized that some of the concerns she had was not within the purview of the Board. She said she felt there were some issues they could work with Mr. Noha as far as landscaping. She said she also did not want the petitioner to have to move houses around and make it more uniformed only to meet the criteria and not to request a variance. She said she felt may be they needed more time to work with the petitioner on this. She said she appreciated his concerns about some additional landscaping. She said this was an area that was experiencing a lot of growth and she wanted to make sure it was done to the best of their ability as well as most pleasing to the neighborhood. She also stated her concern for the area was the problems that the infrastructure was facing with all the development. She said they had issues of drainage. She said she felt this was why the new regulations with the Health Department which she

understood did not affect Mr. Noha because he was recombination rather than a subdivision. The other concern she had was that Whitfield Avenue itself was not a wide road. She said the only sidewalks on Whitfield Avenue was the ones that Mr. Noha put in when he did the development Beaulie Oaks. She said they were not equipped out there for the development that they were experiencing. She said she just wanted to go on record that she had a concern about what they were doing in this area and what the infrastructure could currently withstand. She said she supported Mr. Noha and would be willing to work with him on a neighborhood meeting with regards to the landscaping and make sure the neighbors were comfortable with the development.

Mr. John Swindell, stated he was a resident of the area. He lived on the corner of Whitfield Park Drive and Whitfield Avenue. He said he could see the development from his upstairs windows. He said he was not aware that a variance was being requested. He said he realized today that it was given a Whitfield address, yet the variance sign was placed on the side street and not on Whitfield. Initially, he was opposed to the project. He said the houses that were there and because of septic issues a couple of them were close together and he was concerned for fire reasons. He said in hearing the options that were available for the property he was now in favor of the petitioner's project. He said he would ask for the petitioner to consider additional landscaping, particularly more Live Oaks because it was somewhat of a historic area.

Mr. Noha stated the property was broken off of an original piece of property. He said it fronted Heather Street and not Whitfield Avenue and that was why the sign was placed in front. He said he understood their concerns with regards to the landscaping and will work with the neighbors.

Mr. Murphy stated he was still concerned about the letter the Board received from Engineering and felt that issue needed to be resolved.

Mr. Day stated he felt the Board could grant a variance for the entire site with a condition that the lots designated as 112 and 114 not be build upon until agreement with the County Engineering department is achieved and if that is not achieved then this variance would not apply to those two sites.

Mr. Noha stated as he has mentioned earlier the lots could be built upon as they were with no variance. He said if the Board approved the four lots today then he would put the two smaller houses most likely and move them back to the 35 foot variance.

Mr. Day stated he felt it would take him a period of time to build the houses. He said if the County was out there working on the drainage system now and was going to be finished within 2 to 3 months, if he started his construction on the other four properties by the time he got to the two in question the County should be finished and every issue resolved at that point. He said he could then make a decision as to whether he wanted to with the blessing of the Board use the setback as they have designated or he could take and build smaller houses and set them back. He said he felt if they did it that way that would give them a way forward both for the County and developer.

Mr. Noha stated he understood, but what he did not want to happen was that he gets approval to build on four lots and then because of whatever something happens and he is not able to build at all on those two lots.

Mr. Day stated he was not saying that.

Mr. Cohen stated he felt the petition should not be pieced meal. He said he felt the petition needed to be continued and may be they could have a special meeting to hear the case again before the next regularly scheduled meeting.

Mrs. Burke stated Mr. Panther felt he could meet with the Engineering Department by the end of this week. She said if the Board rescheduled the meeting she recommended that it not be before the next week.

Mr. Noha stated he was scheduled to be out-of-town and if he could not rearrange his schedule then may be a representative could be to the meeting.

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals continue the petition as submitted to Wednesday, January 31, 2007. Mr. Cohen seconded the motion and it was unanimously passed.

RE: Minutes

1. Approval of CZBA Minutes – December 19, 2006

CZBA Action: Mr. Day made a motion that the Chatham County Zoning Board of Appeals approve the Regular Meeting minutes of December 19, 2006 as submitted. Mr. Cohen seconded the motion and it was unanimously passed.

RE: Adjournment

There being no further business to come before the County Zoning Board of Appeals, the meeting was adjourned approximately 11:25 a.m.

Respectfully submitted,

Deborah Burke,
Assistant Secretary

DB:ca