

SAVANNAH ZONING BOARD OF APPEALS

**ARTHUR A. MENDONSA HEARING ROOM
112 EAST STATE STREET**

APRIL 24, 2007

2:30 P.M.

REGULAR MEETING

MINUTES

MEMBERS PRESENT:

**James Byrne, Chairman
Timothy Mackey, Vice – Chairman
Stephanie Bock
John P. Jones
Paul Robinson**

TECHNICAL STAFF PRESENT:

Tom Todaro, City Development Services

MPC STAFF PRESENT:

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

RE: Call to Order

RE: Welcome

Mr. Byrne welcomed Ms. Stephanie Bock, newest member appointed to the Savannah Zoning Board of Appeals.

RE: Minutes

1. Approval of SZBA Minutes – March 23, 2007

SZBA Action: Mr. Mackey made a motion that the Savannah Zoning Board of Appeals approve the regular meeting minutes of March 23, 2007. Mr. Jones seconded the motion and it was unanimously passed.

RE: Consent Agenda

**RE: Continued Petition of Bonnie Hendrix
B-061227-51157-2
102 West 50th Street**

The petitioner is requesting approval of variances in order to subdivide a parcel for the purpose of creating two lots, one of which will be occupied by an existing two-family residence and the other to be occupied by a newly constructed two-family residence. The requested variances include: a 5,172 square foot lot area variance from the minimum 7,200 square foot lot area required, and a 20 foot lot width variance from the 60 foot lot width required by Section 8-3025 of the Savannah Zoning Ordinance for lot 1; a 2,705 square foot lot area variance from the 6,000 square foot minimum lot area required, a five foot rear yard setback variance from the 25 foot rear yard setback required, and a nine foot side yard setback variance from the 15 foot side

yard setback required for lot 2 of Section 8-3025 of the Savannah Zoning Ordinance. The subject property, located at 102 West 50th Street, is zoned R-4 (Four-family Residential).

Summary of Findings: All of the conditions necessary for granting the variances requested appear to be met.

SZBA Action: Mr. Mackey made a motion that the Savannah Zoning Board of Appeals **approve** the petition as submitted based upon a finding that all of the conditions necessary for granting the relief requested appear to be met. Mr. Robinson seconded the motion and it was unanimously passed.

RE: Petition of Andrew Udinsky
B-070327-87909-2
0 Staley Avenue

The petitioner is requesting approval of a six foot rear yard setback from the 25 foot rear yard setback requirement of Section 8-3025 of the Savannah Zoning Ordinance in order to construct a single family residential dwelling. The subject property is located at 0 Staley Avenue (southeast corner of Staley Street and Fluke Avenue). The property is zoned R-6 (One-family Residential).

Summary of Findings: All of the conditions necessary for granting the requested variance appear to be met.

SZBA Action: Mr. Mackey made a motion that the Savannah Zoning Board of Appeals **approve** the petition as submitted. Mr. Jones seconded the motion and it was unanimously passed.

RE: Petition of Courtley Ealey
B-070327-88538-2
532 Orchard Street

The petitioner is requesting approval of a variance to allow 60 percent lot coverage as opposed to the 30 percent lot coverage allowed, and a 10 foot rear yard setback variance from the 25 foot rear yard setback requirement of Section 8-3025 of the Savannah Zoning Ordinance in order to construct a single family residential dwelling. The subject property is located at 532 Orchard Street. The property is zoned R-6 (One-family residential).

Summary of Findings: All of the conditions necessary for granting the requested variance appear to be met.

SZBA Action: Mr. Mackey made a motion that the Savannah Zoning Board of Appeals **approve** the petition as submitted. Mr. Robinson seconded the motion and it was unanimously passed.

RE: Petition of Pascal Greene
B-070327-88782-2
0 Gabel Street

The petitioner is requesting approval of a 2½ foot lot width variance from the 40 foot lot width required for each of two lots in accordance with Section 8-3055 of the Savannah Zoning

Ordinance in order to construct two single family residences. The subject properties, located at 0 Gable Street, are zoned R-6 (One-Family Residential).

Summary of Findings: All of the conditions necessary for granting the requested variance appear to be met.

A neighbor requested that the above - mentioned petition be moved to the Regular Agenda.

SZBA Action: Mr. Robinson made a motion that the Savannah Zoning Board of Appeals move the Petition of Pascal Greene, B-070327-88782-2 from the Consent Agenda to the end of the Regular Agenda. Mr. Jones seconded the motion and it was unanimously passed.

**RE: Petition of Mike Townsend
B-070327-89049-2
602 West 40th Street**

The petitioner is requesting approval of a 10 foot side yard setback variance from the 15 foot side yard setback requirement of Section 8-3057 of the Savannah Zoning Ordinance in order to construct a single family residence. The subject property, located at 602 West 40th Street, is zoned Cuyler-Brownsville P-N-C (Planned Neighborhood-Conservation).

Summary of Findings: All of the conditions necessary for granting the variance requested appear to be met.

SZBA Action: Mr. Mackey made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted. Mr. Robinson seconded the motion and it was unanimously passed.

RE: Regular Agenda

**RE: Petition of The Beehive Foundation
B-070227-35754-2
217 West Liberty Street**

Present for the petition was Dolly Chisholm, Attorney.

Mr. Hansen gave the following Staff report.

Due to questions raised concerning proper public notification, the petition was continued from the March 27, 2007 hearing.

The petitioner has appealed a decision made by the Historic District Board of Review and is requesting Board of Appeals review thereof pursuant to Section 8-3163(a) of the Savannah Zoning Ordinance. The subject property is located at 217 West Liberty Street.

Findings

1. At the February 14, 2007 meeting of the Savannah Historic District Board of Review, the petition of Gunn, Meyerhoff & Shay seeking approval for Demolition and New Construction, Part 1 Height and Mass on the property at 217 West Liberty Street was considered. In accordance therewith, the Savannah Historic District Board of Review

voted to approve the petition as submitted by a vote of 5-1. A copy of the February 14, 2007 minutes from the Savannah Historic District Board of Review is attached.

2. Section 8-3163(a) of the Savannah Zoning Ordinance provides that "...the Board of Appeals shall hear and decide upon appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this chapter, or from any decision of the Historic Board of Review and Metropolitan Planning Commission site plan reviews." In accordance with Zoning Ordinance requirements, the petitioner has filed an appeal in a timely and acceptable manner.
3. The petitioner alleges that the Historic District Board of Review erred by not adhering to the requirements of Section 8-3030(k)(6) *Visual Compatibility Factors* of the Ordinance. The Section states generally that "new construction...shall be visually compatible with structures, squares and places to which they are visually related." The Section also lists a series of factors to be considered in determining visual compatibility including "...new construction or additions to existing structures shall be within the height limits as shown on the historic district height map."

Section 8-3030(l)(1) further states that "...the height map...with the signature and seal of the clerk of council, is hereby adopted and approved and made a part of the zoning map of the City of Savannah as an [overlay] thereon. All new construction or additions to existing structures shall be within the height limits as shown on the historic district height map. Maximum heights on the Height Map shall be permitted." The Historic District Height Map provides for a maximum height of five (5) stories to be allowed on the subject property.

4. In their report to the Historic District Board of Review, the Board staff recommended approval for demolition of the non-historic commercial building located on site, and recommended approval for Part 1, Height and Mass. As noted above, the Historic District Board of Review, following presentation by staff and after hearing from people both in support of and in opposition to the plan, voted 5-1 in favor of the requests.

Summary of Findings

There appears to be no error made in the decision of the Historic District Board of Review in approving both the demolition request and the Part 1 Height and Mass.

Ms. Chisholm stated The Beehive Foundation owned property adjacent to the subject project at issue. She said Gary Arthur who was the principle of The Beehive Foundation also owned property adjacent to the subject to the property. She said the plans that she was showing on the screen was provided by Patrick Shay with regards to his proposal. The Historic Review Board first heard the underlying petition for the construction of this proposed five story condominium project on November 8, 2006. At that meeting, the Board denied the petition by a majority vote of 4 – 1 on the grounds that the project was not visually compatible with the neighboring two and three story structures in Pulaski Ward as shown on the map. She said later it was determined that there was allegedly not a quorum. She said seven constituted a quorum under the rules. While there was seven present at the time of the vote, the chair did not vote and one member recused himself and therefore there was a vote of 4 – 1. She said the petition came before the Board again in February for reconsideration because even though they voted against it, the project, they said that there was not a quorum. She said there was seven

there but only five voted. She said it then went back before the Board in February the composition of the Board had changed with the new year, so it was a new group voting in February. At the February meeting numerous members of the public including individuals, citizens, neighbors, and institutions spoke against the project stating that it was not visually compatible with the Pulaski Ward neighborhood and that it should be four story not five. No one except the petitioner spoke in favor of the project. The City Attorney, James Blackburn, who is here today attended the February meeting and as seen by the minutes that have been provided to the Board told the members of the Review Board that while the subject ordinance said that buildings shall be visually compatible with related buildings, the ordinance also stated that new construction shall be within the height map and he said the height map controlled.

She further stated it was their argument that there was no where in the ordinance, no where in the ordinance it said that the height map controlled. In fact, section 8-3030, K – 6 which Staff pointed out earlier which said that new construction shall be visually compatible with structures, squares, and places to which they are visually related appeared to have greater weight. It was the overarching provision of the ordinance. She said height was just one factor to be considered. The assumption that the height map controlled completely removed all discretion from the Board to determine whether or not a structure was visually compatible with respect to height. She said if that was the case there would be no need for Historic Review Board or a Zoning Board. The City Attorney could just make all of the decisions. Mark McDonald, an Attorney and the Director of Historic Savannah Foundation stated at the February meeting that he was on the committee which authored the revisions of this ordinance that is at issue and that it was never the intentions of the committee to allow the height map to control visual compatibility. Additionally, Gloria Horstman who could not be here today but who has signed an affidavit (presented to the Board), Gloria was the chairman of that revisions committee. In the affidavit the Board would see she stated that it was never the intention of the committee for the height map to control and she also stated that the City Attorney was never in attendance in any of those meetings. She said it was clearly not the intent of the ordinance committee to render the visual compatibility standard meaningless as to height and mass.

She said it was therefore their position that the City Attorney incorrectly advised the Historic Review Board that the height map controlled, that he improperly told the Board members how to vote, and that the voting would have been substantially different if he had not made such assertions. She said she attached a copy of the February minutes to the appeal which showed on page 21 of those minutes that Board members Mr. Neely and Mr. Johnson both felt that the project was visually incompatible but thought they had to vote in favor of it because of Mr. Blackburn's insistence. Additionally, after having the transcript of that meeting made, it was clear as shown on pages 35 and 44 that Board member Dr. Caplan did not like the project and that Mr. Gay abstained from voting because while he said that he did not like the project he could not turn it down because "apparently the ordinance allows it." She said if Mr. Neely, Mr. Johnson, Dr. Caplan, and Mr. Gay along with Swann Seiler who voted against it had not been told that they had to vote for the project the vote would have been 5 against the project and 2 in favor and for a second time it would have been denied. She said they were therefore requesting that the Board overturn the Review Board's decision or that they send it back to the Board with the stipulation that they consider the height map only as a factor in determining visual compatibility and that they be allowed to use their discretion when voting as contemplated by the ordinance.

Mr. Byrne stated with regards to the issue of standing, he understood that a person who is aggrieved could appeal to the Board for review. He said his understanding of someone that was aggrieved, an aggrieved party they must show that they have an interest that was different

from the rest of the public. In other words, just because this was a tall building how was that different from the rest of the public walking down that street.

Ms. Chisholm stated if they were an owner of adjacent property they were different than the rest of the public. She said her client owned property directly behind and also diagonally. She said she felt in all of these standing issues it has always been that adjacent property was what it took to have standing and they would be different from the public as they would be the ones next to it.

Mr. Byrne asked just because they were next to it or was there any other reason?

Ms. Chisholm stated economically it could hurt their property values if they had something that they felt damaged the fabric of their neighborhood.

Mr. Byrne asked if she had anything to present to the Board today that this proposal would damage property values in terms of evidence?

Ms. Chisholm stated no. She said she did not realize that there was a standing issue. She said she was allowed to file an appeal and they were allowed to show up at the last time. She said it was only continued because of service not because of any grounds. She said she was happy to supplement something if need be. She said she knew that standing and having done some research on this in Superior Court she could testify to the fact that there has been allowed standing if you were an adjacent property owner.

Mr. Byrne stated assuming that they have standing with regards to the section 8-3030 K-6 of the ordinance the visual compatibility factors. In reading this, the ordinance seemed to be clear which says – *these factors and they were referring to the height, proportion of the structures front façade, proportion of openings, etc. these factors shall not be the basis for appeal of an adverse decision.*

Ms. Chisholm stated that would be in the case if it was a visual compatibility with regard to height. She said if Mr. Shay was denied because of height not in the case of them appealing because of visual compatibility.

Mr. Byrne stated he was trying to narrow down what the mistake was that they were saying that the Historic Review Board made.

Ms. Chisholm stated she did not think they made a mistake. She said they ended up voting incorrectly. She said she felt the mistake was made in that they were not allowed to use their discretion and to even consider visual compatibility. She said the minutes will show that Mr. Blackburn said the height map controlled, forget about visual compatibility. She said why would you even have visual compatibility in here. Therefore, the mistake was in the way that they were advised and therefore voted a certain way because of that advice.

Mr. Byrne stated these folks wanted to put in a five story building. He said the compatibility components may come in, in terms of what those five stories looked like rather than the five story height itself. He asked if that was true?

Ms. Chisholm stated she felt height was just one of the many factors to be considered with regard to visual compatibility.

Mr. Byrne stated under subsection 1 with regard to height it said – *all new construction or additions to existing structures shall be within the height limits as shown on the Historic District height map.* He asked if that was right?

Ms. Chisholm stated it does.

Mr. Byrne stated the Historic District Height map indicated that five stories was what you could build up to in that area. He asked if that was right?

Ms. Chisholm stated yes. However, it was their contention that this was just one factor to be considered with visual compatibility. She said what would be the point of visual compatibility if it had to be the height map.

Mr. Byrne stated it could be tall and pretty which he felt was kind of the idea.

Ms. Chisholm stated she felt there were designs as well but height was one factor.

Mr. Robinson asked Mr. Byrne if he could read the statement over again that said the height shall be within?

Mr. Byrne stated it was subsection 1 under Height – *all new construction or additions to existing structures shall be within the height limits as shown on the Historic District height map. Maximum heights on the height map shall be permitted.* He said as a lawyer, *shall*, meant it was a command. It was a mandatory language. It was not discretionary.

Ms. Chisholm stated this was a different section than the one that she was reading from which was K and this was L. Under K it said – *shall be visually compatible.* She said her point was both of them say *shall*, therefore where was the weight of evidence that showed height map controlled as has been told by the City Attorney.

Mr. Byrne stated his point was that he felt you could not read them separately. He said he felt you needed to read them together. He said what she was saying was let's read this separately. He said L – 1 which said clearly that they were allowed to do this, this was mandatory. He said he felt the problem was with the ordinance itself. He said you have to understand that the Historic Review Board as well as this Board was bound by what the ordinance said. He said he understood that you have to use discretion, but it was almost like she was trying to say read these separately and it almost amounted to like an end run around these factors shall not be a basis for an appeal.

Ms. Chisholm stated she understood what he was saying and the ordinance was confusing. But she felt there was no where that said one controlled the other. She said she felt height was just a factor and that the visual compatibility was the overarching part of the ordinance and height was just a factor to be considered. She said that was their position.

Mr. Byrne stated he understood. He asked if anyone else had any questions for Ms Chisholm?

Mr. Mackey asked Ms. Chisholm if she could go back two paragraphs to the beginning of the statement that she was reading?

Ms. Chisholm asked if he was referring to the February minutes?

Mr. Mackey stated yes.

Ms. Chisholm stated attached was a copy of the February minutes to the appeal which showed on Page 21 that Board members Mr. Neely and Mr. Johnson both felt that the project was visually incompatible but they thought they had to vote for it because of Mr. Blackburn's insistence. Additionally, after having a transcript made of the tape of the meeting it was clear as shown on Pages 35 and 44 that Board member Dr. Caplan does not like the project and that Mr. Gay abstained from voting because he said while he didn't like it, he felt he could not vote against it. In the end she said if Mr. Neely, Mr. Johnson, Dr. Caplan, and Mr. Gay along with Swann Seiler who voted against it had not been told that the height map controlled and could have used their discretion with regard to visual compatibility then the vote could have changed to 5 – 2 as opposed to the other vote.

Mr. Byrne asked if there were any other questions for Ms. Chisholm? He asked if there was anyone else speaking either for or against?

Mr. Mark McDonald, Executive Director of Historic Savannah Foundation, stated he was here today to speak in favor of the appeal. Historic Savannah Foundation was an organization established in 1955 to protect the historic character of Savannah and Chatham County. He said they had over 2,000 members who relied on Historic Savannah to advocate for buildings, places and new construction taking place that could harm or damage the architectural and historic character of our City. Likewise, the City's Review Board was chartered for like purposes in 1968. He said it said clearly in the ordinance, the provisions provide for the preservation and protection of historic buildings, structures, appurtenances, and places that are the basic and vital importance for the development and maintenance of the communities, vacation travel industry, its tourism, its culture, and for the protection of property values because of their association with history, their unique architectural details or there being a part of or related to a square, park or area the design or general arrangement of which should be preserved and or developed according to a fixed plan based on economic cultural historical or architectural motives or purposes. He said this was in the preamble to our ordinance.

He stated the ordinance as Ms. Chisholm has already established has a number of visual compatibility factors which were listed and all of them are to be considered in the ordinance. On Page 8 of the factors it said – *the following factors shall be considered in determining the visual compatibility of such a building, structure, or appurtenance provided they comply with the specific design standards as set forth in this subsection.* He said there were eleven factors. Height, being the first and they have talked about proportions of the front façade, proportions of openings, rhythm of solids to voids, etc. He said J (scale of a building) – *the mass of a structure and size of its windows, door openings, porches, columns, spacing stairs, balconies, and additions shall be visually compatible with the contributing structures to which the structure is visually related.* He said there was no provision here that said that any of these factors were more important or shall trump any of the other factors. This building was reviewed by the Review Board for height and mass. He said Ms. Chisholm has already established what the procedure there was. The building was initially turned down because it was felt to be visually incompatible because of its height and because of its scale. The drawing that Ms. Chisholm had up clearly showed what the Review Board was looking at, what the citizens were looking at, and what the people who had to live around this proposed new building would be looking at. A building that was clearly to the naked eye, trained eye, and to an untrained eye visually incompatible. He said that building was denied and would have been denied again as Ms. Chisholm established had the City Attorney not come to the Review Board meeting when it was brought back up for reconsideration and told the Review Board that they had no choice but to

approve it because of standard number A – Height. He said they completely ignored all the other compatibility factors including most importantly J.

He further stated he was not an architect but an attorney. He said if the height map called for a building 4 story tall here there was a way of building a building that was 4 story tall. He said a single block that did not take into account what might be beside it like they saw here. He said he felt and he has seen it done by the Review Board that they have the authority to require that buildings be designed so that the mass even if you took the extreme argument that they have an absolute right to a 4 story building, the Review Board had the authority to apply these visual compatibility standards so the mass could be designed in such a way, could be modulated, scaled down so that it respected surrounding buildings. He showed a sketch of a building that was 4 story tall that as it may go back to the lane or approached another building that may be 2 story it could be stepped down so that was designed to be compatible with surrounding structures. He said the Board may remember when the Telfair Museum came before the Review Board because that was exactly what the Review Board did in that case. He said they asked the Telfair to scale the building down as it approached the lane and that was the way it was designed today and as it approached the buildings on State Street to the west of it you see them step down so that they may more appropriately reflect the height of the row houses. The Telfair was the extreme example of a design process under a microscope and this was the Review which has been successful building. He said they were just asking the Board to apply the law today in the same manner that the Review Board applied it to every other petitioner.

He further stated if the Board looked at the words and read them exactly they could agree with even some of it. He said where it said Height – *new construction or additions to existing structures shall be within the height limits as shown on the Historic District height map.* He said he would point out that if the height map said 4 stories and the Review Board required them to build a 3 story building, three stories was within 4 stories. He said 5 story was not within a 4 story limit, but four stories was within it and 3 stories would be to. He said he felt the language needed to be applied directly and explicitly and they would see that there was authority to apply these standards in a reasonable way. He said as the Chairman has also said to apply them all and read them both together and not just one at a time. The Review Board members are appointed and the Board could see in the language so that they would have special learning or knowledge. He said they did not just appoint lawyers to the Review Board who read the language. He said they were appointed so they have some discretion and taste the experience in the historic preservation. Experience in architecture so that they could look at these designs, apply the standards in a humanistic and rationale way and not just in a legalistic way. He said this was why the Review Board had eleven people on it of all different disciplines so that they could use their knowledge to interpret the standards, apply the visual compatibility factors and do their job to protect Savannah's historic character. He said what they were asking the Board to do today was overrule the Review Board in this case and to correct an error because an error was made when the Review Board was not permitted to do its job and not permitted to apply the visual compatibility factors.

Mr. Byrne asked what error was he saying was made?

Mr. McDonald stated there was an error made when the City Attorney approached this podium and told the Review Board, and he was there that they did not have any choice but to approve the building as it was submitted because it was the number of stories that the height map showed. He said there was a lot of frustrated people on the Review Board that day because looking at the picture they knew they could not in good faith find that that was visually compatible but they had to approve it because they were told by the City Attorney they had no

choice but to do so. He said that was a harsh result. He said if this precedent was following every case and that was really why they were here today, was yes, they were concerned about this building, the result here was unsatisfactory and damages the historic character of the City. He said if this was the precedent that until they could get this law changed which was as the Board knew a long process because it took them three years to get the height map changed this past time. The building boom that the City was in, if this was going to be the standard for review then they might as well as Ms. Chisholm said just turn this over to the Zoning Administrator on this issue.

Mr. Byrne stated that was what the Board does. He said that was the Board's job right now on this appeal. He said they had the same power as the Zoning Administrator.

Mr. McDonald stated they were asking the Board to apply the special knowledge and training that they have to correct an error.

Mr. Byrne stated he wanted to give Mr. Blackburn a chance to respond. He asked if there were any other questions from the Board to Mr. McDonald?

Mr. Mackey stated his point to Mr. McDonald was that clearly in their Bylaws there are no precedents and each case will be determined on a case-by-case basis. He said he hears the argument that's been proposed that for a lack of a better term there was some coercion. From the statement he felt that was simply advice and he did not know whether that was coercion because there was a difference. He said as far as the view that he saw right now was the City Attorney represented the City. He said as far as arm twisting he did not know if they met that argument but he was entitled to listen.

Mr. McDonald stated he felt he was exactly right especially at the Review Board level. He said every case is supposed to be different. He said there was not supposed to be precedent carried from one to the other. But when the City Attorney appears at the Review Board meeting and tells Review Board members on the record that they have no choice but to vote a certain way that becomes the legal standard. The Review Board then could be held to that same standard when they are reviewing future cases. He said that was what he really was concerned about.

Mr. Mackey stated let's be careful and keep it not to accusations but to keep it to fact.

Mr. McDonald stated that was a fact.

Mr. Blackburn stated he normally would not and does not respond to such but this was a personal attack on him. He said that was incorrect and Mr. McDonald was well aware that he made him read the words that he conveniently did not read again to the Board. He gave no direction to anyone. He said he gives legal opinions. He said he has been giving them to the City for 40+ years. He said he has had more to do and more hours spent in the Historic Review process than anyone in the room and been at it longer. He said he resents the inferences that he somehow have some interest in this. He called to the Board's attention and to the Chairman's attention, they read from some portions of this but they did not read the definitive section nor did Mr. McDonald. In reading this the words say – *maximum heights on the height map shall be permitted*. He said you design around it but maximum height shall be permitted. He said his ruling was that in height and mass that the Review Board can't say and he believed the language used was lop off a story. He said he did not think this Board had the authority in a completely legal issue what's the error.

Mr. Byrne asked what about the argument that just because it could be 5 stories it does not have to be?

Mr. Blackburn stated there was a legislative history to this. He said the place it should be was City Council. He said City Council added the language that he just read to the Board at the public hearing only. He said he would like to give the Board a little background although he was hesitant to do because he did not want to inject himself into this but the Liberty Street corridor height map was not changed. He said it has always been 5 stories. He said he did not think that was the issue of the question that they raised here. The question was whether or not the height map and the language that Council put in "*maximum height shall be allowed*" then does somebody have the right on compatibility standards to say you can't have the maximum height. He said the only issue as far as he was concerned was whether or not the maximum height shall be allowed if the Board found compatibility on all the other standards they have as this Board did. So, the legal ruling was that the last language there that you know was in there and you said you didn't remember it being there, but you now know it was in there and it was added in the legislative hearing before City Council because the property owner's rights of certainty to know what he could design. He said that was his ruling and it still was his ruling. He said he think he has been misquoted greatly. He said he thinks the last meeting, the reason it was postponed was because the property owner has a right also. He said the property owner was here and should be given a chance to respond. He said he should not argue the case of either side. He said it was the ordinance says and he gave his opinion.

Mr. Robinson stated he was confused. He asked Mr. Blackburn if he was saying that it was mandatory to grant the 5 story level?

Mr. Blackburn stated no, he did not say mandatory to grant the 5 story building. He said as they both went through the Telfair project for a lengthy period of time. The design the architects come up with of the building, you could have a 5 story building. He said a lot of things have been pointed out that could be done on compatibility. But you can't say you can't have a 5 story building. The ordinance says "*maximum height shall be allowed.*"

Mr. Robinson stated something was not squaring with him. He said it said "*shall be within the height limits.*"

Mr. Blackburn stated that was correct, but the next sentence said "*maximum height shall be allowed.*" He said Council added that in the legislative hearing.

Mr. McDonald stated he apologize to Mr. Blackburn. He said he did not mean it as a personal attack. He said he was merely disagreeing with his interpretation of the law. He said it again today and he was not representing that he said it any different than what he said to the Board today. He said he felt he was in error because he said to the Board it was his opinion but then he went further to say it was his ruling. He said Mr. Blackburn was not the judge in this proceeding, so he does not have a ruling.

Mr. Byrne stated he did not want to get into a lot of personal stuff. He said he wanted to know what the facts were and he wanted the Board to be informed on that.

Mr. McDonald stated he was not trying to be personal. He said he was trying to remind the Board of the words that was said. Ruling versus an opinion and that was where he felt the error occurred. He said the provision under Height came after the visual compatibility factors. It says – "*the above visual compatibility factors are further expressed in the following implementing*

design standards.” He said this amplified the height compatibility factor. He said it did not explain or mitigate the scale. He said he was right that it provided a further amplification of what the height compatibility factor was but it did not modify or affect scale. He said he wished he had the Board’s attention on this because he felt it was an important point.

Mr. Byrne stated he has the Board’s attention. He said he understood the arguments.

Mr. Tom Todaro, City Development Services, stated he researched this and went back four years through the minutes of City Council where Mr. McDonald was present, City Attorney, and himself. It was clear if you read the minutes the purpose of the height map was so that there was some predictability. It was in the past if someone would have a 6 story building or would be allowed the Historic Review Board said they wanted four and that was what they ended up. He said the height map came out of that whole discussion. He said if you look at the text when it was changed which was in 2003 and if you read the minutes the City Manager specifically said that this gave a developer, property owner, so forth predictability meaning this is what they shall be able to do. He said if you look at what was enacted clearly there was one sentence added to that paragraph that he had up there and it was in bold in the minutes. The paragraph that was added was “maximum heights on the height map shall be permitted.” He said that was specifically added so that as things got changed everybody understood that was the height limit and then you had to work around the visual compatibility issues as well. But they were entitled to the 5 stories and that was the way it was done. He said Ellis Cook actually brought up a point in one of the meetings that he did not want visual compatibility to be a factor when it came to height. He said that was exactly why these height maps were done. If you go through the minutes and Mr. McDonald was there and he supported this height map as it was written with this sentence in there as well as Mrs. Horstman. He said it was clear that the height map was designed as a predictability factor and it supercedes the visual compatibility portion.

Mr. Byrne stated he would like the minutes from City Council made a part of the record.

Mr. Jon Hart, Attorney, representative for Julius Bennett and Mr. Shay who could not be here today. He said Mr. Bennett was the gentlemen that bought the property. He said Mr. Bennett was the person that owned the property. Mr. Bennett was the person that went down before he bought the property and looked at the zoning classification on the property and this use was a permitted use. Mr. Bennett was the one who went down and looked at the height map that said it shall be 5 stories. Mr. Bennett was the person who went down and met with the Historic Preservation people to find out if any of the buildings that were going to have to be modified had any historical significance and was told no. Mr. Bennett employed an attorney. Mr. Bennett employed an architect and proceeded to play by the rules. He designed a structure that required absolutely no variances from this Board. It met every single one of the rules that was written in the ordinance and that was what we go by here. He said we do not go by somebody taste. We do not go by I know better than you. He said we go by the law because we are a country that goes by the rule of law.

In this particular case, this is ridiculous. We have a staff report that went down all eighteen of the visual compatibility requirements and made a recommendation that they either met or recommended that they accept what the application requested. It was a totally clean submittal. The only comments and the only discussion if you go back and read the record was I think it ought to be 4 stories. He said that was not one of the choices you get and that was not the way the ordinance was written. You play by the rules. He said there was a statement that there was no question that there was standing never raised. He said Mr. Chairman, you hit the nail right on the head. You got to have legal standing. Standing was not that I can see it. He said they

did not file this appeal because they won below. He said the Board found that they met all the requirements of the act. He said they were not told this appeal was going to be filed. He said when they found out about it the first thing they did was file all their defenses. He said number 1 says – applicant does not have legal standing to bring this appeal under the Zoning Ordinance of the City of Savannah and that entity fails to demonstrate it will suffer special damages as a finding and result of this decision and it went on from there. He said the statement that standing has never been raised politely said is disingenuous. The statements made that this was some sort of discretionary floating never nebulous situation as to what height was, politely said is disingenuous. He said if you read the statute there was no other way to read it. He said if you listen to the Zoning Administrator and read the history of the statute there was no other way to read it. Not only once did it say that but it said it twice. He said then the ordinance adopting the height ordinance said it again.

He said if they went down the visual compatibility standards it talked about visual compatibility factors and then it said – visually compatible to the structures that they are visually related to. He asked what does visually related to mean to anybody? He said it was pretty vague. But they knew from Oglethorpe's plan a couple of things. He said you knew there is an East Broad and a West Broad in the plan which gave north and south travel for commercial reasons. He said you knew there is a Bay Street, Oglethorpe, and Liberty that was a boulevard for east – west transportation. He said they knew historically on those boulevards tall buildings have always been built. He said they knew historically that if you looked at that this building was compatible with those that fronted on Liberty Street. You have the DeSoto Hilton on there. You have the DeRenne Avenue apartments which were of similar character there. You have two large parking garages there. You have the Civic Center across the street from it. He said that was just the way things have been and that was what the plan was to be.

He further stated if you read the ordinance it said height under K-6, the very first principle under there is height of the construction shall be within the height limits as shown upon the historic height map. He said there was a purpose for that map. If you go under the design standards under L-1 it came back and said the same thing all over again. He said except as the City Attorney pointed out it says – “shall be permitted.” He said there was no other way to read this. He said you could try to say we want to move things around and make it something that it was not but that was what it said. He said they have an ordinance that for very good reason City Council said they wanted to have this study of heights around the downtown area because there was always discussion about that. He said people wanted to quit talking about whether it was 4 story, 3 story, 2 story, 1 story, 1½ story. He said they brought all the stake holders in and they came up with a height map. Before the height map the City Attorney was correct 5 stories were allowed on Liberty Street because it was a boulevard or large street. He said that was kept within the plan and agreed to by everyone. He said the only thing that happened at City Council was they wanted to make it clear that they were going to get that issue straightened out. You are going to go down there check your zoning. You are going to go down there and if it said 4 it meant 4 and if it said 5 it meant 5. He said there was a very good reason for that. If you want to have proper growth and if you want to have people who were willing to make investments in this community they have to be able to rely on something that they knew something about. He said in that case it was zoning and in that case it was height.

He stated Mr. Bennett has done everything that has been asked of him and everything that could possibly be asked of him. He said this argument that but for the City Attorney saying something that oh was just terrible and if he hadn't said that he was clairvoyant enough to figure out what somebody else would do. I can read minds was a ridiculous argument. He said nobody knew what those people would do. He said that was only rank speculation. To send an

affidavit in here today from somebody that sat on the committee a hearsay thing that don't even show up today to talk about it. He said then your Zoning Administrator read the minutes from the meeting that said "shall means shall" was ridiculous. He also said when they finally got notice that they had been appealed they filed their appeal and they wrote the City Attorney a letter. He said one thing he said in the letter was "further as you will note the wording of appeal inaccurately contributes comments not made by the City Attorney and which are out of context with the words of the ordinance." He said Mr. Blackburn had every right to be a little bit disturbed about this thing. He said he felt this was let's play games with somebody else's property. This was I know better than you know. He said this was just trust us. We want to follow the rules when the rules meet us but heaven forbid if the rules don't suit our services let's not follow them today let's do something else today. Trust me. He said that was not the way this worked. He said his client deserved to have the decision of the Staff affirmed. The decision of Zoning Administrator affirmed. He said his client deserved to have the Planning Commission's decision affirmed. He said there was absolutely no evidence of abuse of discretion. He said as everyone knew if there was nothing that forbids somebody from doing something with their property then the tie goes to the runner – the property owner. He said this was no tie. He said this was a grand slam homerun, walk around the bases.

Ms. Chisholm stated Mr. Hart said that he had some defenses but they were never served or seen any. She asked if they could have a copy?

Mr. Hart stated yes.

Ms. Chisholm asked who were those sent to?

Mr. Hart stated the same people she sent hers to.

Ms. Chisholm stated no one sent them to them, so she was not disingenuous.

Ms. Janet G. Frye stated she was one of the owners of the property directly adjacent to the proposed building. She said her building would be dwarfed by the size and mass of this structure. She said the building that she owned was the oldest existing building south of Liberty Street in downtown Savannah. She said it would be her hope that the Board would respect the historical significance of the neighborhood as much as they would the height map. She said she did not believe tourist or historians come to Savannah to look at tall buildings. The charm and beauty of the City was the history of the City. She said she hoped that the ordinances were treated equally.

Mr. Bill Stube (President of Downtown Neighborhood Association) stated he would go with the idea that the property was not visually compatible with the neighboring properties. He said this was not just a line here. He said this was solid mass although it stepped back from Tattnell Street. He said if the Board looked at the rear elevation of the building this mass was what was behind this thing here, so this building was really filled up to the lane 5 stories in the back. He said at a recent meeting of the Downtown Neighborhood Association Emma Adler, a preservationist and citizen of Savannah had the following comment to say – "I think in recent years the thing that's worried me more than anything else is the use of the entire footprint of the lot and building the maximum height allowed. The scale of these condos is offensive and overwhelming and it is destroying some of the pedestrian human scale that we are used to." He said this was reported in the Savannah Morning News the day after the...

Mr. Byrne stated he did not want to interrupt him but the Board was here to look at was a strict question if there was a mistake made by the Historic Review Board.

Mr. Stube stated there was a mistake made because the building was not visually compatible with the neighborhood.

Mr. Byrne stated they understood that but the comments needed to be relevant.

Mr. Stube stated he just wanted to point out this visual compatibility issue was an extremely important issue. He said he felt it was the Board's duty to weigh that carefully.

Mr. Byrne stated they understood that.

Mr. Dan Frye (President of the Manor House Condo Association) stated they resided next door to the proposed property at 201 West Liberty Street. He said the house was 3 story and had six condominiums in it. He said there were five owners to the six condominiums. One lived in Connecticut, two lived in Ohio, and two lived in Savannah. He said he was one that lived in Savannah. He said they asked him to represent them. He said they all felt that the visual compatibility standard was not being met in this case. He said they all felt like the height and mass of the building was not correct for the neighborhood and was not what they felt they were investing in when they invested in Savannah. He said they love Savannah and love Chatham County, but they did not like what was happening by building a building of this size and mass. He said their message was Save Our Savannah (SOS) and they hoped the Board will help them with their SOS. He said they did not think that Savannah needed this in this neighborhood. He said this neighborhood was a historically significant neighborhood that they certainly were in agreement to something being built on that lot...

Mr. Byrne stated he has to be fair to everybody. He said if he has something to say about an error or any legal issue and he understood that he was not a lawyer but where he felt the Historic Review Board made some kind of mistake other than you don't think this fits in. He said the Board understood that.

Mr. Frye stated they felt like the visual compatibility has been ignored on this. He said the height map has taken precedent and they did not think it should. He said they support the Beehive Foundation petition.

Mr. Henry Reed stated he was a resident in Pulaski Ward and also the Captain of Pulaski Ward. He said currently there was no historic building anywhere in Pulaski Ward that was visually compatible with the proposed building. He said he knew what the Board was trying to address here was the error that the Beehive Foundation pointed out that was made by the Review Board. He said he felt an error was made and he did not believe the City Attorney meant to create that situation but he felt the Review Board misinterpreted what he said. He said if the Board looked at the minutes they were constantly talking about lopping a whole story off so it became a total issue of height. He said he agreed with the City Attorney that the ordinance allowed buildings up to that maximum height. He said if they imagined a City of pyramids which were of a certain height and someone wanted to build a square box and put down in the City it would not be visually compatible. He said this building was not visually compatible with the other buildings of historic nature in Pulaski Ward.

Ms. Carmen Redmond (Resident of Crawford Ward) stated she understood only the issue of the error was to be addressed. She said she was not at the meeting but she was hearing from

both sides that a perceived influence was put on the Board. She said whether it was intentional or not she did not know. She said she hoped the Board because of that conflict would refer this back to the Review Board to be reconsidered. She said she felt there was enough question on this that it would need to be reconsidered and then everyone would have a chance to voice their concerns.

Ms. Bock asked if the Board was allowed to send it back to the Review Board?

Mr. Byrne stated the Board has the discretion to do that to remand it. He said the Board has the discretion to deny it and they have discretion to approve it. He asked Mr. Blackburn if that was correct?

Mr. Blackburn stated the only discretion he would say the Board has was to make a decision that an error was made or that decision was procedurally wrong.

Mr. Byrne stated so the Board would have to reverse the Review Board's decision. He asked if that were to happen what would happen after that?

Mr. Blackburn stated they would have to see.

Ms. Bock asked if the answer was no that they could not send it back?

Mr. Byrne stated he understood the Board could either affirm or deny the appeal. He said whatever procedure happened after that was out of the Board's hands.

Mr. Hart, Attorney, stated the petitioner would also raise the issue of jurisdiction of this Board based on some State statues versus City Council. He said there was some legal differences of opinion there and they did not need to be taken up today. He said they would also raise constitutionality of the language of this ordinance as being unduly vague, arbitrary, and capricious.

Ms. Kay Gardner stated this came to her attention recently. She said she knew there were rulings here and in some cases you're going to approve whatever is legal but there was also eye appeal. She said they have to be very careful in this area, especially in the historic area because the people who come here were coming here to see Historic Savannah and they want the feel of that. She said if they have overwhelming heights it was going to take away from that appeal. She said she wished it would be considered for the neighbors because this was a bit of a towering building that they reconsider the height for all concerned.

Mr. Byrne closed public comments.

Mr. Robinson stated he may be in the minority but he felt Ms. Chisholm and her group have convinced him to support their argument.

Mr. Mackey stated he felt Mr. Reed came close to sticking to what his interpretation was that there was perhaps something that needed to be changed. However, there has been some testimony that he felt was considered to be relevant and relative. He said the Board has heard from the Zoning Administrator, City Attorney, Counsel from the Beehive, as well as Counsel representing Mr. Bennett. He said the points that were overwhelming were the eighteen points that were mentioned that Staff has thoroughly went over and the statement of a clear submittal. He said in his mind he has not witnessed or heard anything that would compel him to believe

that there was legal standing. The Historic Review Board in his interpretation as a committee member on the Board he did not see where there has been an error made. He said to remand this back to the Historic Review Board at this point he felt was almost fishing because obviously you have Review Board members who would hear the case now who did not hear the case originally. He said he felt that was fishing for a different decision. He said he has not heard anything that would compel him to believe that there has been an error made. He said he was prepared to make a motion if there was no other discussion from the Board.

Mr. Jones stated after listening to both sides and reading over everything because they discussed this in March and he believed this was the second or third time it has been before the Board. He said he took out the Zoning Ordinance and read it. He said he was a member of the Metropolitan Planning Commission when the height map was revised and sent to City Council to be adopted. He said there was some revisions before this was adopted 2003. He said he did not feel that the Historic Review Board made an error. He said he did not see where there was legal standing to change the decision of the Historic Review Board. He said the only recourse left after this was Superior Court of Chatham County.

Mr. Byrne stated the Board was ready for a motion.

SZBA Action: Mr. Mackey made a motion that the Savannah Zoning Board of Appeals **deny** the petition as submitted based upon a finding that there appears to be no error made in the decision of the Historic District Board of Review in approving both the demolition request and the Part 1 Height and Mass. Mr. Jones seconded the motion and it was tied 2 – 2. Opposed to the motion were Ms. Bock and Mr. Robinson. The motion was passed 3 – 2 with Mr. Byrne, Chairman, Mr. Mackey, and Mr. Jones voting in favor of the motion.

**RE: Petition of Richard Guerard, For
H.O. Price, LLC
B-070227-36098-2
342 Drayton Street**

Present for the petition was Richard Guerard.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of an application to allow lot coverage of 84 percent as opposed to the 75 percent lot coverage allowed by Section 8-3025 of the Savannah Zoning Ordinance. The subject property, located at 342 Drayton Street, is zoned R-I-P-A (Residential-Medium Density).

Findings

1. Section 8-3025 of the Savannah Zoning Ordinance provides that lot coverage in the R-I-P-A zoning district shall be allowed to a maximum of 75 percent. The petitioner is seeking a variance from that provision that would allow 84 percent lot coverage in order to construct a condominium project on the subject site.
2. The subject property is considered a standard parcel within the R-I-P-A district. Measuring approximately 100 feet wide and 120 feet deep, the site area contains approximately 12,000 square feet. Existing development standards would allow a

building footprint of approximately 9,000 square feet. The petitioner is requesting a variance to allow a building footprint of approximately 10,000 square feet.

3. The petitioner submitted a request for approval for New Construction, Part 1 Height and Mass to the Historic District Board of Review. The hearing for the request was conducted on April 11, 2007. At said hearing, the City Visual Compatibility Officer recommended approval of the request, noting that the original structure located on the property occupied approximately 80 percent of the lot. The Historic Review Board concurred with the recommendation and approved the Part 1 Height and Mass request noting specifically that the nine percent variance to be requested from the Zoning Board of Appeals is visually compatible.
4. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:
 - a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

The subject property is considered a standard parcel within the zoning district. There are no extraordinary or exceptional conditions pertaining to the property in question because of size, shape or topography.
 - b. **The application of these regulations to this particular piece of property would create an unnecessary hardship.**

Strict application of the regulations of the Zoning Ordinance would not create an unnecessary hardship.
 - c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are not peculiar to the particular piece of property involved.
 - d. **Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the Savannah Zoning Ordinance.**

Relief, if granted, would not likely cause detriment to the public good and impair the purposes of the Ordinance. The request, as proposed, is in character with the lot coverage of surrounding properties and has been deemed to be visually compatible by the Historic Review Board.

Summary Of Findings

All of the findings necessary to grant the requested lot coverage variance appear not to be met.

Mr. Jones asked if there will be sufficient parking?

Mr. Hansen stated he would have to assume that there was. He said this body was not charged with reviewing that particular matter. He said that will be something for the Historic Review Board. However, he felt it was in conformance based upon the fact that the petitioner has not requested any variance from the Board other than for lot coverage.

Ms. Bock asked if it was a clear site and there were no historic buildings to be worked around what was the reason for the variance request.

Mr. Hansen stated that may be a question better asked of the petitioner. He said as mentioned in the staff report Staff felt the first three items A, B, and C that those conditions have not been met. But if the Board granted the variance that there will be not substantial detriment.

Mr. Guerard stated the zoning was a 4 story zoning district. He said they have designed a building for this particular piece of land about five or six different times. He said they worked closely with Historic Savannah Foundation and Preservation Staff (Mrs. Reiter). He said they changed the design. He said what they ended up with was a building that they dropped 1 story so that it would be 3 stories versus 4 stories to give height change. He said by dropping down one story they had to go wider in the footprint which still kept the building low. He said the reason they did that was because they still had their density but they also managed to drop one story on one building and make it fit into the neighborhood better. He said he felt they reached a compromise with the Historic Review Board in the way that they took their suggestions as well as Staff's and the public and came up with a good design. He said that was the reason they were requesting a variance on the surface area coverage to meet their compromise on the height. He said the other option was they could build 4 stories to get the density but it would make the footprint smaller.

He further stated with regards to hardship he felt the four points were guidelines for the issuance of variance and not rules for the issuance of a variance. He said he was not under a hardship because they could have done 4 stories in their view as well as their legal counsel. He said he felt hardship was kind of a harsh word because it was more of community input for them to try and drop the height of the building. He said they addressed that request from the community which was why they have wider and shorter building.

Ms. Pat Zimmery, Chairman of Andrew Lowe House, she said they were directly across the street from the proposed development. She said she was also representing Louise Howard, State President of the National Society of the Colonial Dames of America in the State of Georgia. She said she also was representative for the 1400 members in Georgia. She said part of their mission in the National Society of Colonial Dames was to preserve historic sites and to educate citizens about the country's history. She said nationwide they had over 15,000 members. She said they were second only to the National Park Service in the ownership and maintenance of historic museums and properties that were priceless monuments to the country's past. In Georgia their combined state headquarters and museum house, Andrew Lowe House was located at 329 Abercorn Street. The lot was purchased in 1847 and the house was completed in 1850 by Andrew Lowe. She said its strong classical design was by the architect John Norris who also designed Savannah's Customs House. The Andrew Lowe House stands on a trust lot that originally was the site of Savannah's first jail. She said they have just completed an archaeological excavation on part of the site working with Georgia's State historic preservation office. In addition, in 2004 the Andrew Lowe House was named by the National Park Service to receive a prestigious save America's Treasures Grant only the

second site in Georgia to receive such an honor. The house was part of the historic fabric of Savannah and was a valuable asset to our City. The English author William Makepeace Thackeray stayed in the house in the 1850's and wrote about the garden, one of only three original gardens left in Savannah.

Mr. Byrne stated he knew she had a prepared statement and they will stipulate that it was a historic site. He asked if she could move to the point where they disagreed with the petition.

Ms. Zimmerly stated they understood that Mr. Guerard had the right to the use of his property but they respectfully object to the lot coverage variance sought by the petitioner. She said parking was limited around their house and as many as 20 more cars parked around Charlton Street would create a hardship. She said they believed that the congestion and the noise that the proposed density would create was not in keeping with the ambience of their quiet historic neighborhood nor was it in keeping with the sense of history that their visitor's to the Andrew Lowe house expect and appreciate. She said they respectfully request that this project not be approved for their historic neighborhood.

Mr. Byrne stated everyone understood parking in Savannah was a problem. He asked if that was the purview of the Historic Review Board?

Mr. Hansen stated not entirely. He said what he stated was that the Historic Review Board would have to review the structure for conformance with all of the development standards. He said his assumption was because Mr. Guerard has not at this time requested any parking variance he assumed that he could and would provide the necessary parking per the code.

Mr. Byrne stated the Board was here at this point just to consider the lot coverage variance.

Mr. Hansen stated yes.

Mr. Byrne asked Ms. Zimmerly what specifically was their objection with the lot coverage variance?

Ms. Zimmerly stated they felt the higher the footprint the more density in the building which would increase the number of cars. She said they felt the density in the footprint in this particular case needed to adhere to the current rule.

Mr. Mackey asked Mr. Guerard with regards to the mass how would that be mitigated other than dropping one story?

Mr. Guerard stated they will provide 21 or 22 parking spaces on-site out of the view of the public. He said what they did to mitigate the mass of the overall structure was through several meetings with the Historic Review Board as well as several meetings with Staff that was where they came up with the three tier or drop back system. He said there were different windows, shutters, and porches on each one that gave the appearance that it was three row homes from Charlton Street. He said they also went back and redesigned and put three separate entrances into the building to continue the appearance of three separate row homes on Charlton Street. He said that was through the direction of the general public, Historic Savannah Foundation, Staff, and the Historic Review Board to help to mitigate the mass to give it that appearance in addition to stepping down one side of the building.

Mr. Mackey asked what was the percentage increase over the former structure compared to the proposed structure.

Mr. Guerard stated 4 percent. He said regardless of the request for the variance today the density remained the same. He said this was not an issue of parking or density. He said the density will stay the same. He said what would happen is they would have to redesign and they would go 4 stories on the whole structure.

Mr. Jones asked what was the difference between his proposal now and the original proposal when he said they would leave the canopy on the front of the structure and build around that?

Mr. Guerard stated they had less height overall.

Mr. Bill Stube, President of Downtown Neighborhood Association, stated they applaud the redesign of this building and felt the developer has done a great job with it. But they were concerned about the 75 percent lot coverage. He said they felt 75 percent lot coverage was intrinsic in the RIP-A zoning and most of the buildings in the Historic District have 75 percent lot coverage which allowed for open space and green space around the buildings and reduced the overall appearance of density.

Mr. Mackey asked Mr. Todaro if there was a limit on the lot coverage in RIP-A zone?

Mr. Todaro stated the design standard was 75 percent. He said that was why they were asking for a 9 percent variance.

Mr. Walter Hartridge, Attorney, stated they live immediately next door to the proposed project at 119 East Charlton Street. He said the statement that it has been deemed to be in character with lot coverage of surrounding properties. He said their property does not cover 84 percent neither did the property of the house museum which was mentioned earlier. He said he also represented Mr. Claude Drydon of Hinesville soon to be a resident of Savannah who owned the properties at 108 and 110 East Jones which was across the lane. He said all of these entities would have standing in Superior Court. He said Historic Savannah Foundation had an easement on 119 East Charlton Street which was Mrs. Hartridge's property.

He stated he hoped it was clear to all members of the Board that 75 percent in Residential Institutional Professional A zoning was the lot coverage standard. He said there was no grandfathering. The fact that a filling station, which was allowed to fall into disrepair and was demolished in December starts with a clean slate. He said there was an empty lot at 342 Drayton Street. He said he felt Mr. Blackburn, City Attorney would agree with that if he were here that they start with a clean slate. He said as was found in the Staff's findings submitted by Mr. Hansen all of the findings necessary to grant the requested lot coverage variance appear not to be met. He said the ordinance says – "may authorize upon appeal in specific case...where onto special conditions...will an individual case result in unnecessary hardship..." He said then it says – "such variance may be granted in an individual case upon a finding by the Board of Appeals that (1) there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography." He said the staff report pointed out that it was a standard parcel within the zoning district and there were no extraordinary or exceptional conditions pertaining to the property in question because of its size, shape, or topography. He said that was it. That was it on the record. (2) He said these were all in the conjunctive. He said the application of this chapter to this particular piece of property would create an unnecessary hardship. The findings – such application would not create an

unnecessary hardship. He said there was nothing in the record to show any unnecessary hardship. Finally, such conditions referring to 1 and 2 are peculiar to the particular piece of property involved. He said finally relief if granted would not cause substantial detriment to the public good.

He further stated he respectfully submit that you had to find all four. He said there was no discretion. He said he would respectfully submit that this was crystal clear that under this ordinance that this variance on this record should not and could not indeed be granted.

Mr. Byrne stated he heard the petitioner say that they did this because they were trying to get along and fit in historically and they don't need to do this. He said he heard the petitioner also say they could put four stories on this piece of property and he would not need a variance that he would need to get approval by the Historic Review Board.

Mr. Hartridge stated he heard the petitioner state that he stated in one hearing before the Historic Review Board well if we don't spread it out it will go up. He said he felt that remained to be seen. He said and it has been pointed out in prior debates and discussions that there was a fragmented process. He said you have the Historic Review Board, Zoning Board of Appeals, City Inspections, Metropolitan Planning Commission, City Traffic Engineer, City Council, etc. He said there were a lot of things involving this that were not before the Board today such as the noise ordinance and how many AC units would be on the roof, traffic coming in through the lane and so forth which was not before the Board. He said there was one issue before the Board and one ordinance that governed the Board. He said he understood that you might get what you want in all of that, but his client was prepared to face that down the line. He said he would respectfully submit Mr. Byrne, as Chairman and a lawyer that based on this record and what this ordinance said that it was cut and dry.

Mr. Byrne asked what made him think that those were conjunctive elements? He said that has never been clear to the Board.

Mr. Hartridge stated he felt it was crystal clear from any rule of construction of any statute in this state or ordinance that it said clearly in plain English – upon a finding by the Board that 1, 2, 3, 4. The mere omission of the word “and” was not dispositive. The word “or” for the alternative no where appeared. He said he researched the law and was prepared to argue if the Board wanted him to go into lawyer arguments. He said each one of those must be met. He said if the Board read it, clearly it was all construed together. He said it said – such conditions obviously referred to 1 and 2. He said the staff report said all of the findings necessary to grant the request for lot coverage variance appeared not to be met. He said he did not think any court anywhere would say that these were in the alternative or that it got to be discretionary. He said it said what it said in the previous hearing. He said they were both lawyers but he respectfully submit that under any judicial construction of this that it would be deemed to be all required. He said that all of them in the conjunctive and have to be met.

Mr. Byrne stated he was not arguing with him about it but he was saying that the Board get this all the time that these conditions appear not to be met on each of these elements. He said the Board has never gotten a definitive answer one way or the other on it. He asked Mr. Hansen if that was true?

Mr. Hartridge stated Mr. Hansen was not a lawyer.

Mr. Byrne stated no, but he was a valued member of this Staff.

Mr. Mackey stated as esteemed as Mr. Hartrige was and a member of a reputable firm, however, Mr. Hartrige's job was not just to compel that of the Chairman but he also had to convince the rest of the Board as well. He said he agreed that he has made some good points. He stated with regards to the 75 percent in the RIP-A Mr. Hartrige mentioned that they start from a clear slate. He asked Mr. Todaro if that was true?

Mr. Todaro stated yes.

Mr. Mackey asked in the event that there was no variance request what would be the percentage that the petitioner would have to meet. He asked if it would be 75 percent period?

Mr. Hansen stated 75 percent was the maximum allowed by right under the ordinance. He said the petitioner could build anything up to and including 75 percent without having to ask for a variance and come before the Board. Because it was in the Historic District as has been certainly noted he would have to get the approval of the Historic Review Board for any particular structure he would place on that property. He said as to the question which has been raised and for the record "no he was not a lawyer" but he has asked this particular question of the City Attorney. Although he did not have any opinion in writing...

Mr. Hartrige stated he would have to object to any hearsay opinion of the City Attorney rendered by the Board's able administrator.

Mr. Byrne stated he appreciated that but this was not a courtroom of law. He said he understood his objection but the Board allows the statement for what it was. He said not for the truth of the matter asserted.

Mr. Hansen stated in discussions with Mr. Blackburn he has indicated to him that the Board could make a finding as long as they made a finding based upon 1 or any of the combination of the 4 items listed. He said as the Board knew and as they have indicated they probably list approximately 85 – 90 percent of the cases. He said although in anticipation of what Mr. Mackey may say no there is no precedent. But 85 – 90 percent of the Board's cases list that particular finding from Staff that all of the conditions appear not to be met. Yet the Board approve probably the vast majority of them. Largely, based upon the finding that the relief if granted would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance. He said that in the opinion or as at least stated to him in the opinion of Mr. Blackburn was something that the Board had the prerogative to do.

Mr. Mackey stated this question has come up before and it came up during the time when he was Chairman of Board of Appeals. He said he remembered not specifically what the particular petition was but he remembered the conversation which was of that language. He said it then and he would say it now that it was contradictory and not to point at anyone. He said he felt it could be confusing. He said of the four conditions, was the Board to meet all 4, 1 out of the 4, 2 or 3 out of the four.

Mr. Hansen stated he did not know that he could give a definitive answer. He said what they have said on the record and what they said in their staff report was in their opinion they do not meet all four. He said what he has told the Board that Mr. Blackburn has indicated to him hearsay though it may be was that as long the Board could make a finding that at least one or a combination of all four have been met that they have the prerogative to grant a variance.

Mr. Hartridge stated the ordinance says – the Board of Appeals may authorize upon appeal in a specific case such variance in the terms of the this chapter ... (inaudible) public interest where owing to special conditions – none have been shown. A literal enforcement of provision of this chapter will in an individual case result in unnecessary hardship. He said no unnecessary hardship has been shown. A literal enforcement of this chapter will in an individual case result in unnecessary hardship. He said no unnecessary hardship has been shown. He said then the variance shall not be granted. Such variance may be granted in an individual case upon a finding by the Board of Appeals that 1, 2, and 3 referred back to 1 and 2. He said clearly that was what this ordinance said. He said to say that the City Attorney said something to the Administrator who himself said all the findings appear not to be met he found incredible that he could not communicate with the Board that was what this ordinance said. He said with all deference to Mr. Blackburn perhaps the ablest City Attorney they ever had the best one in Georgia, nevertheless none of us was infallible. He said that was why he had this printed up on the computer from the City's official site and showed the Board the numbers because it did not use letters as was in the report.

Mr. Guerard stated he wanted to object to a couple of things. The statement was made that I'm sure if Mr. Blackburn was here he would agree with me which was made by Mr. Hartridge. But then Mr. Hartridge objected to hearsay later which he felt was hearsay but he did not object to himself saying it. He said the other thing was Mr. Hartridge's interpretation of his opinion of what the ordinance read was insignificant to the Board. Historically, the Board has approved many things as mentioned by Staff based on 1 of the 4 or any of the four being approved. Whether or not the ordinance was right or wrong was the same argument they had last time. He said this was not just somebody coming in and saying I want to cover all the ground. He said this was after months and months of working with the City, Staff, Historic Review Board, and general public was that this was a plan that they all agreed with. He said he felt it was extraordinary circumstance because both the Historic Review Board felt like this plan was in the best interest of the City of Savannah. He said Staff also thought this was the best plan as well as most of the community.

Mr. Byrne asked the petitioner if his petition was denied what would be his next move?

Mr. Guerard stated he would redesign the building to be 4 stories and cover 75 percent of the surface area.

Mr. Byrne asked if he would need to apply for a variance at that point?

Mr. Guerard stated no, but it would go against everything that the Historic Review Board, Staff, and most of the citizens worked for.

Mr. Mackey asked who was the Historic Compliance Officer in this particular petition?

Mr. Guerard stated Mrs. Reiter.

Mr. Mackey stated he would like to ask Mrs. Reiter a couple of questions. He asked Mrs. Reiter if there was anything from her station with respect to this particular petition pertaining to its effect on lot coverage or the structure?

Mrs. Reiter stated only the fact they have worked for the past 3 months to try and do what she thought was discussed in the previous petition of altering the varying heights and the ins and outs to make the building fit into the district. She said whether it was 75 percent or 84 percent

there was still going to be 20 units in the building. She said this was a way they were trying to help it fit into the neighborhood.

Mr. Mackey stated with regards to her statement that whether it was 75 percent or 84 percent if that was the premise, what was the Board's charge. He asked what was the Board's charge if it does not make a difference?

Mrs. Reiter stated if it was 75 percent the building will be taller because something has to give. She said making it 84 percent the building becomes lower.

Mr. Robinson stated he felt the Board's charge was to render a decision on the petition by the applicant

Ms. Bock asked if the petition could be amended to 80 percent which was the previous lot coverage and if that would make both parties happy?

Mr. Byrne stated if the Board did not want to approve it they could vote no. He said the Board could also vote for it. He said the Board could make any motion they wanted.

Mr. Hansen stated it was permissible for the Board to go down. He said it was not permissible for them to go up. He said the Board could pick any number theoretically between the 75 and 84. He said they could not for instance because the application was for 84 percent they could not arbitrarily say 87. He said that would require a new hearing and readvertising and such.

Mr. Hartridge stated with all due deference they would submit that could not be done because the issue was 75 percent and there was no evidence here under this ordinance to permit the variance to be granted. He said they take the position that that would not be proper under the scheme under which all of us this has been very carefully put together. He said they felt they have to be consistent about that.

Mr. Guerard stated 480 square feet X 4 stories was 1600 square feet which was one full condominium. He said that was basically where the percent came from by lowering a whole story off the building. He said by taking a whole story off which was very visual from a street. He said the 480 square feet was a very plus the other additional five percent which was how they reached the compromise. He said he would like to point out again, that Mr. Hartridge's opinion was that you can't because the ordinance says that not in the past Chatham County or City of Savannah's.

Mr. Hartridge stated it was not his opinion. He said it was what the ordinance said in its literal language about 75 percent and what this ordinance said that was before them. He said it was not his opinion. He said he did not write the ordinance. He said City Council wrote the ordinance exercising its legislative powers.

Ms. Bock asked the petitioner if he would be amenable to 80 percent?

Mr. Guerard stated he felt it would not make a difference because he would still have to go back before the Historic Review Board.

SZBA Action: Ms. Bock made a motion that the Savannah Zoning Board of Appeals deny the petition as submitted. Mr. Mackey seconded the motion. The motion was tied 2 – 2.

Opposed to the motion were Mr. Jones and Mr. Robinson. The motion passed 3 – 2. Voting in favor of the motion was Ms. Bock, Mr. Mackey, and Mr. Byrne.

**RE: Petition of Mike Townsend
B-070327-89342-2
641 West 40th Street**

*Mr. Byrne left approximately 4:40 p.m.

Present for the petition was Mike Townsend.

Mr. Hansen gave the following Staff report.

The petitioner is requesting approval of a 17 foot lot width variance from the 50 foot lot width requirement for each of two lots, and a 10 foot side yard setback variance from the 15 foot side yard setback requirement for one property in accordance with the provisions of Sections 8-3029 and 8-3057 of the Savannah Zoning Ordinance in order to construct two single family dwellings. The subject property, located at 641 West 40th Street, is zoned Cuyler-Brownsville P-N-C (Planned Neighborhood Conservation).

Findings

1. The Cuyler-Brownsville zoning district requires a minimum lot width of 50 feet when constructing detached single family dwellings. The petitioner proposes the subdivision of an existing 66 foot wide lot into two 33 foot wide lots and the construction of residences thereon, and is thus requesting width variances for the same. Additionally, a 10 foot side yard setback variance is sought for the lot that abuts the side street (Florance Street).
2. The proposed development has been submitted to the historic preservation staff for review and comment. The preservation staff supports the petition for the variances requested, noting that the traditional building pattern within this block was comprised of lots approximately 25 feet to 35 feet in width. The proposed subdivision is in keeping with the surrounding district development pattern. It is also noted that the plans will have to be submitted to the Visual Compatibility Officer for review.
3. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:
 - a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

The subject property(s) is considered a standard parcel within the zoning district. The proposed subdivision will create two substandard lots consistent with the existing development pattern of the area.

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

Strict application of the regulations of the Zoning Ordinance would not create an unnecessary hardship.

- c. Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are not peculiar to the particular piece of property involved.

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

Relief, if granted, would not likely cause detriment to the public good or impair the purposes of the Ordinance. The request, as proposed, is consistent with the development pattern prevalent in the area, and has the support of the historic preservation staff.

Summary of Findings

All of the conditions necessary for granting the variances requested appear not to be met.

*Mr. Robinson left out of the room.

Mr. Jones stated there were several homes constructed in that area that were on lots larger than 33 feet.

Mr. Hansen agreed. He also pointed out that on the tax map the property in question was currently 66 feet. He said it was being proposed to be divided into two 33 foot lots. He said most of the lots in the block ranged in size from 30 feet to 28 feet. On the south side of the street there was a 30 foot lot on the corner and then there were a number of 45 foot lots. He said the existing pattern on the particular block face for what they were proposing was consistent with that development pattern.

Mr. Townsend stated they were trying to build affordable housing in keeping with the lot size on that block. He said 78 percent of the lots were within the size that they were proposing.

Mr. Mackey asked if he has built in the Savannah area before?

Mr. Townsend stated yes, he has renovated two houses.

Mr. Jones asked the petitioner if he could address the parking?

Mr. Townsend stated they will have rear parking off the lane. He said they worked with the architect to design it. He said they felt it was more in keeping with the neighborhood to have the parking off the lane. He said they were trying to build the houses affordable and they have to off-set the costs somewhere. He said if they were only able to build one house then it would push them out of the market that they were trying to market for which was the Dream Maker Program.

Ms. Bock asked what was the lot coverage on each lot?

Mr. Hansen stated 22 percent.

SZBA Action: Ms. Bock made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted.

SZBA Action: The motion failed for lack of a second.

Mr. Todaro stated the Dream Maker Program was a program in conjunction with the City of Savannah Housing Department. He said the City Housing Department drafted the drawings for the petitioner.

Mr. Townsend stated he worked closely with Martin Freddy and his office to come up with the design so they would be in keeping with the neighborhood so they could do affordable housing for the Dream Maker Program.

Mr. Mackey stated it was mentioned that this was a part of the Dream Maker Program which was a City financed and City subsidized program. He said the program was designed to allow families to afford a home whom otherwise probably would not be able to get into the housing market and be homeowners.

SZBA Action: Ms. Bock made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted. Mr. Robinson seconded the motion and it was passed 2 – 1. Opposed to the motion was Mr. Jones.

**RE: Petition of Pascal Greene
B-070327-88782-2
0 Gabel Street**

Present for the petition was Pascal Greene.

Mrs. Burke gave the following Staff report.

The petitioner is requesting approval of a 2½ foot lot width variance from the 40 foot lot width required for each of two lots in accordance with Section 8-3055 of the Savannah Zoning Ordinance in order to construct two single family residences. The subject properties, located at 0 Gable Street, are zoned R-6 (One-Family Residential).

Findings

1. The subject properties consist of three vacant lots located on Gable Street. It is the applicant's intention to combine the three substandard lots into two substandard lots in order to construct two single family residential structures. The R-6 zoning district requires a minimum lot width of 60 feet and a minimum lot area of 6,000 square feet. However, Section 8-3055(a)(3) allows for adjoining substandard lots to be replatted for single-family residential development to a minimum area of 3,000 square feet and a minimum width of 40 feet where the cumulative majority of all residential lots in the same block face are of equal or lesser area of width than the proposed replatted lots.

2. The subject properties are each 25 feet wide and 112 feet deep, with a lot area of 2,800 square feet. The recombination of the three lots would result in two lots that are each 37.5 feet in width and 112 feet in depth, with a lot area of 4,200 square feet.
3. The majority of the parcels in the area of the subject properties do not meet the minimum dimensional requirements of the Ordinance. The parcels on the block face range in size from 25 feet to 150 feet in width, with the majority being 25 feet in width.
4. In accordance with Section 8-3163 of the Savannah Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

- a. **There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography.**

The subject properties are currently nonconforming lots. The recombination of the three lots into two lots would result in two less nonconforming lots.

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

Strict application of the regulations of the Zoning Ordinance would create an unnecessary hardship by requiring the three lots to be combined into one lot to meet the minimum standards or would encourage the use of lots that are smaller in size and less conforming than the proposed lots.

- c. **Such conditions are peculiar to the particular piece of property involved.**

The conditions described above are peculiar to the particular piece of property involved.

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

Relief, if granted, would not likely cause substantial detriment to the public good. In fact, the recombination of the three lots into two lots would further the purposes and intent of the Ordinance.

Summary Of Findings

All of the conditions necessary for granting the requested variance appear to be met.

Mr. Greene stated he had three lots that he recombined into two lots so that he could build two affordable homes on the lots.

SZBA Action: Ms. Bock made a motion that the Savannah Zoning Board of Appeals approve the petition as submitted. Mr. Jones seconded the motion and it was unanimously passed.

RE: Other Business

RE: Adjournment

There being no further business to come before the Savannah Zoning Board of Appeals the meeting was adjourned approximately 5:05 p.m.

Respectfully submitted,

Deborah Burke
Assistant Secretary

DB/ca