



C H A T H A M C O U N T Y  
Z O N I N G B O A R D O F A P P E A L S

Arthur Mendonsa Hearing Room  
112 Eaast State Street, 9:00 A.M.  
Minutes

**January 24, 2012 Chatham County Zoning Board of Appeals Meeting**

**Members Present:** Lucy Hitch, Chairman  
Wayne Noha  
James Overton  
Brian Felder  
James Blackburn  
Quentin Marlin  
Coren Ross

**Members Not Present**

**Staff Present:** Marcus Lotson, Assistant Secretary  
Constance Morgan, Administrative Assistant

**Advisory Staff Present:** Bob Sebek, County Zoning Administrator

**I. Call to Order and Welcome**

1. [Call to Order](#)

Chairman Lucy Hitch called the January 24, 2012 CZBA meeting to order at 9:00a.m.

**II. Notices, Proclamations and Acknowledgements**

**III. Petitions Ready for Hearing**

**IV. Approval of Minutes**

2. [Approval of the December 20, 2011 CZBA Meeting Minutes as submitted.](#)

Attachment: [December20th.pdf](#)

**Board Action:**

Approval of the minutes with the necessary corrections.

**Vote Results**

Motion:

Second:

**V. Item(s) Requested to be Removed from the Final Agenda**

**The Consent Agenda consists of items for which the applicant is in agreement with the staff recommendation and for which no known objections have been identified nor anticipated by staff. Any objections raised at the meeting will result in the item being moved to the Regular Agenda.**

**VI. Consent Agenda**

**VII. Old Business**

3. [106 Marshview Drive -00073-1](#)

Attachment: [Staff Report.pdf](#)

Attachment: [Amended request.pdf](#)

Attachment: [Tax Map.pdf](#)

Attachment: [Fence Picture 1.pdf](#)

Present for the petitionwere: Mr. Patrick Connell and Mr. Robert Evans

Marcus Lotson gave the following summary:

During the December 20, 2011CZBA hearing, the petitioner for 106 Marshview Drive appealed a finding by the zoning administrator that fences within the riparian buffer could be constructed of wood only. The purpose of this request was to allow the petitioner to complete a partially constructed fence at the subject property. The fence has been partially constructed with concrete footers and masonry columns. The petitioner asked for the item to be continued until this meeting in order to gain further information from the Department of Natural Resources and to further investigate possibilities of allowing this development. Subsequent to the previous hearing, staff met with the zoning administrator and this resulted with the understanding that the petitioner's request is not materially different from any other item that might be requested to be built within the marsh buffer, whether it is a home addition, a swimming pool, etc. Based on this, staff found that the proposal before the board is actually a request for a 9.5 foot riparian buffer variance. The petitioner was notified on November 16, 2011 that a building permit could not be issued for the reason before you. He added that the intent of the zoning ordinance relative to the riparian buffer is to protect marsh areas from construction related impacts. The impact of construction that has begun on the subject property has been determined in the past to be and in cases like this variance have not been granted. In staff's opinion relief in this case would likely cause detriment to the public good and impair the intent of the zoning ordinance. Staff recommends denial.

**Mr. Blackburn** questioned staff as to the difference of the present fence and a wooden

fence. He stated that if the petitioner had constructed a wooden fence he would not be before the board.

**Mr. Lotson** stated that wooden docks are excluded from the marsh buffer and in the past the zoning administrator has ruled that fences are similar enough therefore do not require a variance.

**Mr. Blackburn** asked if this was written in the ordinance.

**Mr. Lotson** responded that it was not, that it was an interpretation.

**Mr. Sebek** stated that there is a note in the development standards that reads; "provided that no structure except for an elevated pier or wooden deck shall be constructed within 25 feet of salt water marshland". He stated that he does consider a fence a structure and his interpretation was that the wood allows it as it is similar.

**Speaking on the petition:** Mr. Connell as agent for Robert Evans, commented on something that Mr. Blackburn picked up on and that he felt that this goes to the heart of the issue. He stated that Mr. Blackburn had asked what the actual distinction was between a wooden fence and the proposed fence. He stated that there is no practical or actual distinction between those types of structures or the types of structures that will be permitted in the 25 foot buffer that Mr. Sebek had referenced which is a different buffer than the one that is at issue here. He asked that board members review the state's riparian buffer requirements. He explained that the adoption of the county's riparian buffer was based on the state's requirements. He went on to explain the state's requirements. He also explained that the purpose of the fence was to restrict unwanted wildlife. He added that there are alligators on the this marsh and small animals that live here and there will hopefully soon be small children on the way. He presented pictures that depicted numerous non wooden fences that existed in similar locations along the marshland and stated that the idea that only wooden fences are erected at marshland locations in Chatham County is not true. He presented slides that depicted fences along the marsh that were made of brick and aluminum. He stated that his client proposes to build of brick and aluminum fence and he added that there is a history of allowing this type of development in Chatham County. He asked board members while considering their vote to consider what it is that they would be trying to prevent if they acutally voted no. They would not be preserving the buffer because there has not been a buffer here for forty years, nor would they be preventing any soil erosion or sedimentation because this type of development simply does not cause any significant soil erosion or sedimentation. What purpose would it serve to deny this variance request and require Mr. Evans to dig up what is already there and move it or forego it completely?

**Mr. Felder** asked Mr. Connell what referenced was he stating when he said that a continuance concrete wall or footing does not promote erosion on the other side of it on the marsh.

**Mr. Connell** responded that it is the state's determination that it is not as significant and that the state in it's statue recited that this is not a land disturbing activity.

**Mr. Felder** commented that the state does not define fence in the information that was given to them and there is a difference in a fence and a large masonry wall. He asked

why was there the need to pour a continuance concrete footer and not just pour under the piers.

**Mr. Robert Evans** stated prior to building the fence he built a dock. He added that he had hired a contractor and specifically directed him to purchase a permit. He was under the impression that a permit was obtained, however it was not. He stated that he did not know that he could not build a concrete footer and apologized for his ignorance. He stated that he would be willing to change the aluminum to wood in order to meet the standards. He added that the dock is not made of wood but hard plastic.

**Mr. Blackburn** asked that the petitioner comment on the material that he now proposes to use.

**Mr. Evans** stated that he would use aluminum fencing similar to the other fences along the marsh. His objective was to keep his animals in and the other animals out.

**Mr. Noha** asked staff to clarify what it is that the board was actually voting on.

**Mr. Lotson** stated that the issue is that this type of fence (concrete) is a structure and structures are not allowed on the marsh.

**Mr. Connell** stated that he wanted to remind the board that the state has said that this is not an issue in their eyes. He submitted a copy of the DNR code section to the board.

**Board Action:**

Motion to approve with the condition that the continuous concrete footer be reconstructed as to serve only as the support for the masonry columns. - PASS

**Vote Results**

Motion: James Blackburn

Second: Brian K. Felder

James Blackburn - Aye

Brian K. Felder - Aye

Lucy Hitch - Nay

Quentin L. Marlin - Abstain

Anthony Wayne Noha - Nay

James Overton - Aye

Coren Ross - Aye

**VIII. Regular Agenda**

4. [132 Cardinal Road - Variance - 00078-1](#)

Attachment: [Cardinal Road Staff report.pdf](#)

Attachment: [132 Cardinal Road Application & Site Plan.pdf](#)  
Attachment: [Cardinal Road Aerial.pdf](#)

Present for the petition was: Attorney Harold Yellin, Agent

Marcus Lotson gave the following summary:

He stated that the petitioner is requesting an 8ft x 6in reduction in the required riparian buffer setback for the purpose of constructing a swimming in the rear yard of a private residence at 132 Cardinal Road. The subject property is lot 50 of the Paxton Hight Subdivision on Isle of Hope. It is within an R-1 (single-family) residential subdivision. The lot is a conforming lot of record. The petitioner has indicated that the need for variance for the proposed pool area and cover is due to the fact that a pool of this nature has a pool cover. He stated that the petitioner was limited in design options based on the need to have a cover as well as they were not able to move the pool closer to the home for reasons of impacting or potentially impacting the foundation of the home. There has been quite a bit of correspondence on this petition. Some of the information is attached to the petition and some of the correspondence came by way of phone calls by neighboring property owners; none of which are opposed to the petition. The desire to have or to design a pool is not considered a hardship. The intent of the ordinance is to protect coastal marshlands from potentially impactful development. The language that was amended in 2010 by this board did its best to create equality for all properties developed or undeveloped in establishing a uniformed buffer. The application of the development standards does not limit the property owner, in staff's opinion, of being able to develop their property to its full potential. Staff recommends denial of the requested variance.

**Speaking on the petition:** Harold Yellin, agent for the petitioner stated that the petitioners are seeking a variance in order to build a pool in their backyard. He added that unlike the petition that was before the board a moment ago, there has been no construction. The petitioners have not begun anything in this yard and they are not within 9ft of the marsh. There is 25ft and they are beyond the 25ft; he noted that this was very important for purposes of this petition. When the petitioners first began looking at the idea of building a pool the marsh setback was 25 feet not 35 feet. The petitioners have been contemplating this for a long long time. Their plans are dated. They have had a DNR delineation done; they have had a land survey done; and a contractor who applied for a permit thinking that it was still a 25ft setback and not a 35ft setback. They learned for the first time, when they went to permit, that in fact the marsh line had moved or rather the ordinance was amended. The proposed pool is more than 25 feet from the marsh, however it is less than 35 feet. This is the reason for the variance request today. The petitioner has also considered other locations before coming before the board but it was just not reasonable to place a pool on the front yard. The side yard is a part of their driveway system and the remaining component of their yard was the back yard. This is the reason for siting the pool in the back yard. The Elkins were asked how close to their house could they go or how far away from the marsh could they place the pool. Year Round Pool, who was their contractor sent Mr. Yellin a letter saying that the pool as designed and submitted is 8 feet 6 inches away from the house foundation. This distance is necessary to prevent undermining and damage to the foundation and subsequent damage to the house. Other shapes and sizes have also been considered for the pool; however, Mrs. Elkin, in particular, is very adamant regarding the pool cover due to the fact that she and Mr. Elkin have young children; they have an eight year old and a five year old. When Mr. or Mrs. Elkin are not at home they

would like to have an automatic pool cover. They have been consistent in that respect. With small kids they would like to have a pool with this automatic pool cover feature and this feature works with a rectangular pool not a round shaped pool or a figure eight pool. The automatic pool cover feature is extremely important to the Elkins. Mr. Yellin also stated that the most common reason for granting a variance is that there is no other reasonable alternative. He submitted that there is no other reasonable alternative for siting this pool other than in the backyard. The other most common reason that he has seen for granting a variance is where there is some confidence that the pool or the addition of the pool will also protect the marsh? He added that he has received a lot of support from the neighbors in the area and that he felt that this pool does warrant consideration as a variance. He asked that it be approved.

**Dr. Elkins**, petitioner stated that the variance he's requesting is not just the water. It will include all of the concrete and he has done as minimal concrete as required to make it more earth friendly. He will also be avoiding as much chemicals as possible. His plan is to do a salt water pool. He understands that this is much better for the environment. He announced that his wife is a pediatrician who has seen quite a bit of pool related accidents. He stated that they will also add a fence around the pool in addition to the cover to help avoid any such accidents.

**Mr. Felder** stated that he was not sure if the arguments that were made were valid. He stated that he thought that you can have a rectangular cover over an odd shaped pool it just wider than the pool and goes over. He asked why the pool could not be a little off centered and out of the thirty-five feet. It can get closer to the house it just gets a little more expensive.

**Mr. Yellin** stated that if the pool were shifted to the left because of the angle being like this more of this area would be here. The end corner would be closer to the house. Moving it over would still require a variance.

**Mr. Noha** asked Mr. Yellin to explain the survey tie line in relation to the property line.

**Mr. Yellin** replied that he was not sure, but Mr. Felder explained.

**Mr. Marlin** stated that after viewing the site plans he did not see any plans for the fence. He questioned the petitioner as to what the fence would be made of or what type of foundation it would have.

**Mr. Noha** asked that the petitioner and the board members consider that the house is situated very closely to the property line that he had concerns regarding the access of emergency personnel and equipment entering from the rear of the house if the need arises. He stated that the petitioner had explained that on the right hand side of the pool, it is 8 1/2 feet but it is actually less.

**Mr. Sebek** stated that in light of Dr. Elkins statement regarding the type of fence which was not covered in the variance; if it is not a part of the variance he would have to come back for a variance on the fence. If the petitioner requested a continuance, staff can re-advertise and include the fence as part of this variance. An aluminum fence is not a permitted type in the marsh buffer.

**Mr. Yellin** stated that the fence is not beyond the area. The fence is a part of this overall rectangle.

**Mr. Overton** asked what year did the setback occur and did the applicant own the property at this time.

**Mr. Yellin** replied yes. That is when they began the process of getting full plans together and along the way it went from 25 ft to 35ft.

**Mr. Overton** questioned if the other pools that were pictured here today, were they in the 35 ft setback or the 25ft setback.

**Mr. Yellin** replied that as far as he knew that all pools are within 35 feet. Some are more than 25 feet. He outlined three of the pools in the neighborhood that he knew of.

**Mr. Marlin** asked Mr. Sebek to explain the reasons for a variance on the fencing. If it is a wood fence he stated the petitioner will not need a variance but if the material is made of aluminum it does need one. He stated that he was not following the reasoning behind this.

**Mr. Sebek** replied that his interpretation was that the notation in the Development Standards states that the only structures permitted within the 25 foot marsh buffer are raised piers and wooden decks. He extended this to fences as a wooden structure.

**Mr. Marlin** questioned what would be the impact in the soil of a wooden post ground versus an aluminum post setting in the ground. He stated that he did not follow the difference in impact.

**Mr. Noha** explained that this petition impacts the 35 foot marsh buffer and that Mr. Sebek's interpretation was for that in the 25 foot marsh buffer. Therefore, Mr. Marlin's question was a moot point.

**Mr. Blackburn** added that if the petitioner is given a variance to build anything they can build. If the petitioner receives a variance to build a concrete floor he can put a fence on it.

**Mr. Yellin** stated that his petition becomes a little bit more confusing because of the previous petition.

**Mr. Blackburn** stated that he would be a lot more comfortable if the pool was moved a little bit more to the west and was 24 feet rather than 36ft. He felt that it would fit.

**Mr. Yellin** confirmed that the Elkins are agreeable to trying to move the pool to the west, but he was not sure that it would be appropriate for their to be any type of motion subject to it being moved. If the board would like for him and his client to come back in exactly one month they would show further evolution of this pool. He added that they would be happy to do this and that they wanted this to be collaborative.

**Mr. Overton** ask the petitioners if they were willing to come back next month after further study, and would they also be willing to move the pool closer to the house thru the use of a

structural retaining wall. He concluded that if this was unfeasible to let them know why.

**Mr. Yellin** replied that he supposed that it was strictly a matter of dollars and cents. He stated that he did not know the cost of this or if anyone had ever been asked to do this. He added that this would really put the pool very close to the house. But they would consider each request from the board. He asked that the board continue this petition to next month February 28, 2012 CZBA meeting.

**Board Action:**

Motion to continue to the next scheduled CZBA meeting, February 28, 2012. - PASS

**Vote Results**

Motion: Anthony Wayne Noha

Second: Brian K. Felder

James Blackburn - Aye

Brian K. Felder - Aye

Lucy Hitch - Aye

Quentin L. Marlin - Aye

Anthony Wayne Noha - Aye

James Overton - Aye

Coren Ross - Aye

5. [39 Falligant Avenue - Variance - 00074-1](#)

Attachment: [Falligant Tax Map.pdf](#)

Attachment: [Site Plan Falligant.pdf](#)

Attachment: [Falligant Photo.pdf](#)

Attachment: [Staff\\_report\\_39\\_Falligant\[1\].pdf](#)

Present for the petition was: Harold Yellin for Thomas and Page Smoak

Marcus Lotson gave the following summary:

The property in question is 39 Falligant Avenue. The petitioner is requesting a variance to Section 2-6.1 of the Chatham County Zoning Ordinance for the purpose of constructing an accessory structure. Section 2-6.1 states that accessory structures were allowed or required to be no more than 900 square feet in size. Subject property is located on Talahi Island within an R-1A single family zoning district. The parcel is approximately one hundred feet wide and 450 feet deep and there is an existing single family residence located on the property. Relative to accessory structures the zoning ordinance states that structures shall conform to primarily three regulations that that structure is set back a minimum of sixty feet from the vehicular right of way and 10 feet from an adjoining property line. Also that the structure not exceed nine hundred square feet as mentioned and that it is constructed to similar building material as the principle building on site and compatible uses developments of the adjoining lots. This particular lot is adequate in staff's opinion at approximately over an acre to allow an accessory structure. There are a number of accessory structures located in front yards along Falligant Avenue. Several of which appear to be at least in the neighborhood of the proposed square footage of this structure. The structure will be thirty feet wide and 60 feet deep and located approximately 130 feet from the vehicular right-of-way. The size of the subject property does allow for minimal impact for this structure. Staff finds that based on the development pattern in the neighborhood and the minimal impact staff recommends approval of the accessory structure.

Mr. Noha stated that he knew staff has been working on the size of the lots and proportions in the unified zoning ordinance but the house is 5500 square feet or there about. This is rather small in relation to the size of the main structure.

Mr. Yellin explained that if you add the foot print of the house plus the foot print of this building together it would be 9.15% of the property. Whereas the City of Savannah allows it to go by lot coverage. R-4 allows 50% and R-6 allows 30%. The county does not look at lot coverage. It happens to be 9.15%

Mr. Noha stated that he was in agreement.

**Board Action:**

Staff recommends approval - PASS

**Vote Results**

Motion: James Blackburn

Second: Brian K. Felder

James Blackburn - Aye

Brian K. Felder - Aye

Lucy Hitch - Aye

Quentin L. Marlin - Aye

Anthony Wayne Noha - Aye

James Overton	- Aye
Coren Ross	- Aye

**IX. Other Business**

6. [Election of Officer](#)

Mr. Lotson stated that the CZBA board does not currently have a vice chairman. Now would be the appropriate time to bring a motion to the floor to appoint a vice chair.

Mr. Noha nominated Mr. Brian Felder to serve as co-chair.

Mr. Felder declined stating that he has served as chairman for two years.

Mr. Blackburn asked whose the next senior person.

Ms. Hitch replied that Ms. Ross was the next senior person.

**Board Action:**

Motion to elect Ms. Coren Ross as Vice Chairman  
of the Chatham County Zoning Board of Appeals - PASS

**Vote Results**

Motion: Brian K. Felder

Second: James Blackburn

James Blackburn - Aye

Brian K. Felder - Aye

Lucy Hitch - Aye

Quentin L. Marlin - Aye

Anthony Wayne Noha - Aye

James Overton - Aye

Coren Ross - Aye

7. [UZO Status Update](#)

Mr. Noha questioned staff as to whether or not the UZO will be approved by the first quarter of this year.

Mr. Lotson replied the it was unlikely that the UZO will be approve before the end of the first quarter. He explained that it is still with the MPC Board and there are a lot of details in terms of questions being answered.

**X. Adjournment**

8. Submittal

There being no other business to come before the board, the chairman declared the Chatham County Zoning Board of Appeals Meeting adjourned.

Respectfully submitted,

Marcus Lotson

Assistant Secretary

/cm

*The Chatham County - Savannah Metropolitan Planning Commission provides meeting summary minutes which are adopted by the respective Board. Verbatim transcripts of minutes are the responsibility of the interested party.*