

CHATHAM COUNTY ZONING BOARD OF APPEALS

ARTHUR A. MENDONSA HEARING ROOM

112 EAST STATE STREET

February 24, 2004

9:00 A.M.

MINUTES

MEMBERS PRESENT:

**Robert Sharpe, Chairman
Jimmy Watford, Vice Chairman
Steven Day
Charles Stewart**

MEMBERS ABSENT:

**Davis Cohen
Michael Lee**

TECHNICAL STAFF PRESENT:

**Trip Van Aman, Chatham County Inspections
Department**

MPC STAFF PRESENT:

John Howell, Secretary

RE: Called to Order

Mr. Sharpe the February 24, 2004 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

**RE: Petition of Harold Yellin, Agent for
R.B. Donaldson
B-04-42343-1
6407 LaRoche Avenue**

Present for the petition was Harold Yellin.

Mr. Sharpe called for the Staff report.

Mr. Howell gave the following Staff report:

The petitioner is requesting a 40 foot front yard setback variance pursuant to the requirements of Section 4-6.1 of the Chatham County Zoning Ordinance in order to build a house at 6407 LaRoche Avenue, within an R-1 (One-Family Residential) zoning district.

Findings

1. Section 4-6.1 of the Chatham County Zoning Ordinance provides that within an R-1 zoning district the front yard building setback is a minimum of 85 feet from the centerline of a secondary arterial street.

2. The petitioner is requesting to build a house 30 feet from the front property line. LaRoche Avenue is classified as a secondary arterial and the street has a 30 foot right-of-way. The minimum front yard building setback is 70 feet.
3. The lot is approximately 7.1 acres in size with 6.4 acres of saltwater marsh. The 'buildable' area is 0.7 acres in size and is irregular in shape.
4. The Zoning Board of Appeals may authorize a variance in an individual case upon a finding 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 irregular shape and size of the buildable area is an extraordinary and exceptional condition pertaining to the subject piece of property.
 - (b) The application of this chapter to this particular piece of property would create an unnecessary hardship.

The application of the minimum 70 foot front yard setback requirement would render the lot unbuildable. Applying the development standards to this particular piece of property would create a hardship in the development of the property.
 - (c) Such conditions are peculiar to the particular piece of property involved.

The irregular shape and size of the buildable area are conditions 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 Chatham County Zoning Ordinance.

Relief, if granted, would not cause substantial detriment to the public good.

Summary of Findings

All of the conditions required for granting a 40 foot front yard building setback variance appear to be met.

Mr. Stewart asked if residential was allowed in the CM district?

Mr. Howell stated no. He said the petitioner will be building in the R-1 district.

Mr. Sharpe asked Staff if they could define CM district?

Mr. Howell stated Conservation Marsh.

Mr. Day stated that Mr. Yellin has done some work for him and his wife in the past.

Mr. Yellin stated as was mentioned there was a 70 foot setback on LaRoche. And the result, if you were to enforce a 70 foot setback would put the building setback line over here. He said what would happen is you would only have this area that he has cross hatched as a buildable

area, effectively eliminating all of this area. He said that was the reason they were here today asking for a variance. If the Board has had the opportunity to drive up or down LaRoche Avenue they would have seen other structures also on this same of LaRoche with 20 foot and 30 foot building setbacks. He said they were not here asking for anything that has not always been given or that was not already there or grandfathered on LaRoche. He said they felt that a 30 foot building setback was more than adequate. He said all of the conditions, particularly, if there were exceptional conditions pertaining to the size and shape of the property. He said if this petition did not fit that characterization then he was not sure that there was one in Chatham County. He said they have heard and agreed with the comments by Staff. He said they respectfully request that the variance be granted as requested.

Mr. Day asked how large was the structure that was going to be on the property?

Mr. Yellin stated the petitioner said it would be as large as 3500 square feet, but on two levels, which would be 1750 per floor. Roughly, it would be 35 X 50.

Mr. Sharpe asked what was the height of the structure?

Mr. Ed Beatty stated the height of the structure did not exceed what he thought was a 35 foot height limit. He said his idea was to have the parking underneath and have the two floors basically like you would see Tybee home. He said there was enough land that it showed a detached garage and a garage that was attached to the structure. So, if you wanted to have more heated square footage you could. He further stated that Tom Miller, DNR, has been out and it has a 25 foot line setback, and they were well within that. He said he had Tom flag the marsh lines and the surveyor to make the line on the drawing, which was the crooked line on the drawing. However, the plans have not been approved, but his idea was to have it like a Tybee home where you could park underneath or beside it with the garage at ground level.

Mr. Stewart asked if it was in the wetlands or classified as wetlands?

Mr. Beatty stated no.

Mr. Stewart asked if the lot had to be elevated in order to build on it?

Mr. Beatty stated no. He said the elevation of the lot was around 13.

Mr. Sharpe stated his understanding was that if you lived in an AE zone that you had to go 14 feet to the living area.

Mr. Beatty stated they would. He said they would build up about 4 blocks or 5 blocks high. He said if you could not get what you needed to achieve in that then that was when you started to see stuff like the Tybee homes where you parked underneath.

Mr. Stewart stated he understood the lot was owned by Mr. Donaldson. He asked if he owned any land adjoining this or on the other side of the road?

Mr. Donaldson stated no. He said he purchased that lot about 4 years or 5 years ago with the intention to build on it. He said he did quite a bit of preparatory work talking to the City about utilities and so forth, and even got aerial photos. However, afterwards he purchased a Condo, and therefore has no use for the lot.

Mr. Stewart asked if he built the causeway?

Mr. Donaldson stated no.

Mr. Yellin...(inaudible).

Mr. Watford asked if this was on City sewage or septic tank?

Mr. Beatty stated he has been in contact with Abe Ghazi, of the City and has gotten approval to put a double duplex guider pump and run it to a gravity fed sewer. He said the sewer was at the entrance of Majestic Oaks. He said he also met with the road department to make sure he could get from that side of LaRoche. He said he got a phone call from Dixie Excavating and they said they would not have to obstruct the traffic.

Mr. Sharpe asked if there was anyone present to speak in favor/against the petition?

Mr. Stewart stated he has looked at the property over the years and felt it was one of the most beautiful views in the City. He said there were other beautiful views in the City where a lot of them have been obscured by things that have happened in the past. He said he could envision something like this happening, for instance along Isle of Hope on Bluff River if somebody happen to want to sell one of those marsh front extensions where the docks were. He said he could also see the atrocities at Thunderbolt. He said the petitioner could build it as long as it met the codes. He said he felt this was just granting something that never should have been granted in the past. He said he felt it was further obstructing the marsh view, the little that was left in Chatham County. He said for that reason he would be opposed to the petition. He said he felt the County and City have gone to great extent of work to preserve the historic area downtown, as well as the State and Conservation people have gone to a great deal of work to prevent destroying the marshes and its views.

CZBA Action: Mr. Stewart made a motion to deny the petition based on the comments as stated above. Mr. Watford seconded the motion.

Mr. Yellin stated he was required by law to state that any vote that denied a property owner of his right to use his property as his own is a denial of his constitutional right. He said it is a taking without just compensation. It is a denial of due process and equal protection. He said it will involve a lawsuit. And it will involve a lawsuit against this Board. He said if this was Mr. Stewart's property, he suspects that he would not have made that same impassioned speech. He said he would want to use the property as his own because he would then have the right to use this property for his own benefit. To require a 70 foot setback is a taking of the property. He said it makes that lot unbuildable. And to imply that this was a view for everyone else, there was no such thing in Georgia as a scenic easement for others. He said if that were the case we would not be allow to develop anywhere in the State or community. He said he was surprised at Mr. Stewart because he was an appraiser and knows better. And to suggest that this view was for the benefit for others was an incorrect statement of fact. It was an incorrect statement of the law. Georgia Law and our Constitution protected citizens and property right owners. He said what was before the Board today was whether or not someone could use their property. As currently stated the anomaly of a 70 foot setback from the centerline takes this property. It says that it was not a buildable lot unless you were given a variance. He said the arguments given were emotional, and not based on fact or law. He said he needed to preserve his objection for the record and tell the Board that he was very surprised by the argument.

Mr. Sharpe stated objection noted.

Mr. Day stated he agreed with Mr. Yellin from the standpoint and he knew where Mr. Stewart was coming from. He said he did not like the fact that they were obscuring the view of the marsh. If there was a way that the petitioner could utilize their property and build on the property in a different location or some place else, but could actually utilize the property he would agree with him. However, the problem was that there were other people as you drive down that road that have already built houses. He said he knew the Board did not look at that as a condition for doing this. But to make this property unusable and virtually take the value of this property away from the person, if there was a way to make the property usable he would agree with Mr. Stewart. But he did not see how you could make the property usable if the Board did not grant the variance.

Mr. Stewart stated the Board did not put the 70 foot setback in the code. He said the County did, and the County Commission at some point along the lines approved it. At that point the County Commissioners made it unusable, not the County Board.

Mr. Yellin stated they authorized the Board to grant variances if warranted.

Mr. Stewart stated for the Board to go against what the County Commissioners have put on this property may require a text amendment and it would be wrong for the Board to do so.

Mr. Day stated he understood what he was saying, but he looked at the finding of Staff and there were four elements of criteria that the Board was supposed to evaluate and look at. If the four elements of criteria are met, then the Board has the ability to grant a variance. He said Staff was saying that the elements of criteria were all met. Other than we were obscuring the view, what was the Board standing on.

Mr. Yellin stated if the Board was going to ask the County to make text changes this Board has nothing to do. He said this Board grants variances and that was why they were created and here. He said if the Board is going to say and advocate their responsibility and say “we are not going to give variances, make the County do it” let us all go home. He said there was no reason for this Board to ever meet again. He said he has been before the Board many times. The Board grants variances all the time for setbacks, height variances, etc and do not ask it to back to County. He said the Board decides. He said Staff stands forward and gives criteria for variances. In this particular case Staff said there were four criteria and all four were met and he was recommending a variance. He said if this was not the time to grant a variance, then he did not know when it was. Otherwise, you have an unbuildable lot and you were taking someone’s in his opinion very sacred property right.

Mr. Stewart stated unbuildable it had a minimum value. He said it would have a much greater value than you have a lot that was not buildable. Right?

Mr. Yellin stated if it was not buildable then it has no value.

Mr. Stewart stated that was the role of an appraiser, like he stated that he was and should know better. He said if he was the appraiser, he would probably know that it had a setback. He said he would not give it the same value as a property if it only had a 30 foot setback. The thing of it was that it was not destroying value because the value was never there to begin with with the setback on it. He said all he was saying was to pay a big price for a lot that had a 70 foot

setback that was not buildable was a crazy way to go about it. He said he felt before you buy is make sure you can build on it. He said if you cannot build on it, then you have not lost anything.

Mr. Sharpe stated the Islands Land Use Plan provided for preserving the historic scenery. He said he felt there was an intent with the Islands Land Use Plan to provide existing areas some protection. He said that was the only thing that he saw was how did this concur with the Islands Land Use Plan or does it not concur.

Mr. Yellin stated the Islands Land Use Plan did not prevent development of property. He said there were waterfront properties throughout the County, which were still being developed pursuant to that plan. The plan actually increased the setback, the DNR marsh line from 25 feet to 50 feet with one exception, if there was an existing lot of record as of the passage of that plan. This was a lot of record, which meant that this must maintain a 25 foot setback. He said Mr. Beatty mentioned that Tom Miller came out. He said the DNR marsh line was being maintained. He said the remaining 7 acres of marsh still goes out this way. The view itself was intact. Yes, there will be a house there, but the purpose for the petitioner buying the property is that he was also in love with that very same view that the public wanted to enjoy. But to say that this property was there for the use of the community rather than for the use of the property owner was contrary to Georgia law. He said that just took property rights and sat it back on its ear because if that were the case we would not have Skidaway Island, Wilmington Island, Tybee Island, or no houses. He said people have property rights and there was a property right that goes with this property.

Mr. Stewart stated property rights included the legal property rights. He said he felt it was not legal the way it presently stands.

Mr. Yellin stated a 70 foot setback contemplated a road with a bunch of development on one side and a bunch of development on the other side. He said that was why there was a 70 foot setback. He said you have this rule that just does not apply in this case. Because on one side of the road there was nothing and on the other side there was a subdivision. He said those were the facts of the case as he knew it. He said this was LaRoche Avenue where everything that warranted the 70 foot setback was on one side of the road and there was nothing on the other side to warrant the 70 feet. In fact, if you went from Derenne Avenue to Wiley Island there was no place on that side of the road that he was aware of that complied or adhered to 70 feet because it just could not be done. He said there was recognition that it was just impossible if not improbable. The only thing that they suffered from was that they were late coming to the Board. But he finds that to be no excuse to deny this variance because the denial completely wiped out any value to this property, which was the most important point. He said the 70 foot rule common sense tells you that it was anticipated for a situation where there was neighborhoods on both sides or development on both sides, so that both sides have a corridor and it was not here. He said that rationale did not prevail here.

Mr. Watford stated there was some property that should not be developed in this County. He asked if Mr. Donaldson was going to live in the house?

Mr. Yellin stated that Mr. Donaldson was the seller.

Mr. Donaldson stated he was born in Savannah and a life long resident. He said he loved this place more than anybody. He said there was nobody who more opposed destroying anything about Chatham County than he did. He said he felt just like Mr. Yellin, that this would be positive for this area. He said he wanted a lot that had a beautiful marsh Savannah view, but he

could not afford to go out to South Harbor and pay \$150,000 for a lot. He said he has small firm with his son, which was the only other property he owned other than his condominium that he lived in. He said this lot was beautiful with a majestic Oak tree sitting in the front of the lot about 10 feet off LaRoche. He said the lot had twenty-four palm trees. The high area of the road made it impossible to block the view, which was gorgeous. He said he felt that a beautiful house would not detract, but would add to the area. He said he hoped the Board would reconsider its motion.

Mr. Yellin stated that Mr. Donaldson was the seller of the property and Mr. Beatty was the buyer of the property. He said Mr. Beatty lived in Effingham County and once his kids finished school this is where he intended to move. He said if it seemed to be an issue with view shed, if the Board would like for them to come back next month and show what would be the footprint of this building and where existing trees were on the property in relation to the entire piece was about the only thing that he could offer to the Board that may give them the comfort level that the view was not being destroyed because it was a large piece of property, which was about 7 acres. He said the only other thing that he could offer to the Board by way of information would be to come back next month and to actually although not required show the Board a footprint, tree plan of how things would sit on this lot to give some indication of the smallness of the structure relative to the entire piece of property. He said maybe that would give the Board a more informed basis for a decision.

CZBA Action: Mr. Sharpe stated there was a motion for denial on the floor. Mr. Sharpe called for the vote.

Mr. Day stated the other option was, if the Board took Mr. Yellin up on his suggestion, then Mr. Stewart could ask that his motion be held until the next meeting and the Board could table the motion and the petitioner could come back.

Mr. Stewart stated the thing was you still had the setback. He said they were asking to build upon what was presently illegal land, so nothing has changed. Also, the residents in front of the nursing home and Eisenhower was located on what was the old Bonaventure Road. And Bonaventure Road followed the marsh line all the way around and then they took out that curb and that was how that land was created.

CZBA Action: Mr. Sharpe called for the vote. The motion failed. In favor of the motion was Mr. Stewart. Opposed to the motion was Mr. Day and Mr. Watford.

Mr. Sharpe asked if there was another motion?

CZBA Action: Mr. Day made a motion to Table this petition for 30 days to allow the petitioner to come back to the Board and show additional information, so that the Board could make a more informed decision on this petition. Mr. Watford seconded the motion and it was passed.

RE: Minutes

1. Approval of CZBA Minutes – January 27, 2004

CZBA Action: Mr. Day made a motion to approve the regular meeting minutes of January 27, 2004. Mr. Watford seconded the motion and it was unanimously passed.

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 9:50 a.m.

Respectfully submitted,

John Howell,
Secretary

JH:ca