

COUNTY ZONING BOARD OF APPEALS
ARTHUR A. MENDONSA HEARING ROOM
112 EAST STATE STREET

September 23, 2008

9:00 a.m.

REGULAR MEETING

MINUTES

MEMBERS PRESENT:

Wayne Noha, Chairman
Terrance Murphy, Vice Chairman
Davis Cohen
Steven Day
Brian Felder
Lucy Hitch

MEMBERS ABSENT:

TECHNICAL STAFF PRESENT:

Bob Sebek, Chatham County Zoning
Administrator

MPC STAFF PRESENT:

Geoff Goins, Assistant Secretary
Jessica Mayfield, Administrative Assistant

RE: Called to Order

Mr. Noha called the meeting of September 23, 2008 Chatham County Zoning Board of Appeals meeting to order at 9:00 a.m.

RE: Regular Agenda

RE: Minutes

1. Approval of CZBA Meeting Minutes – August 26, 2008.

CZBA Action: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals approve the minutes of August 26, 2008 as submitted. Mr. Day seconded the motion and it was unanimously passed.

**RE: Petition of Radford Timothy Daniel, For
H & K Enterprises
B-080804-00095-1
6703 Johnny Mercer**

CZBA ACTION: Mr. Murphy made a motion that the Chatham County Zoning Board of Appeals move the above petition to the end of the agenda. Mr. Day seconded the motion and it was unanimously passed.

**RE: Petition of Brenda Marchbanks
B-080725-00091-1
108 Briarberry Bluff Drive**

No one was present for the petition.

Mr. Goins gave the following Staff Report.

The petitioner is requesting approval of a 18 foot – three (3) inch marsh buffer variance from the 50 foot marsh buffer requirement and a three (3) foot – three (3) inch riparian buffer variance from the 35 foot requirement of Section 4-12 of the Chatham County Zoning Ordinance in order to install a pool. The subject property, located at 108 Briarberry Bluff Drive, is zoned R-1/EO (One-Family Residential/ Environmental Overlay).

Findings

1. The subject parcel is rectangular in shape, with a minimum width of 85 feet and a minimum depth of 110 feet. The parcel area is approximately 9,350 square feet. The R-1 district requires a minimum area of 6,000 square feet and a minimum lot width of 60 feet for lots served by Public Water and Public Sewer.
2. The petitioner originally requested a 21 foot – three (3) inch marsh buffer variance from the 50 foot requirement and a 6 foot – three (3) inch riparian buffer variance from the 35 foot requirement. The request has been reduced by three (3) feet for both of the buffer areas.
3. Section 4-12 of the Chatham County Zoning Ordinance establishes a minimum building setback from the marsh line at 50 feet for lots containing residential structures at the time the Environmental Overlay Ordinance was adopted. The existing structure does not meet the minimum marsh setback requirement and encroaches 16 feet – eight (8) inches into the setback. The petitioner is requesting to extend the encroachment to 18 feet – three (3) inches to install a therapeutic pool.

Section 4-12 states that expansion of existing structures within the riparian buffer shall be limited to a maximum of 1400 square feet of vertical surface area for each 100 feet of lot width facing the marsh or waterfront. The minimum riparian buffer shall be 35 feet, 30 percent of which may be altered by pruning and selective clearing for access and to maintain view corridors. The existing structure does not meet the minimum riparian buffer requirement. The petitioner is requesting to extend the encroachment to three (3) feet – three (3) inches to install a pool. No buildings will encroach into the buffers, so the vertical surface area will be zero (0) square feet.

4. Staff is not aware of any opposition to or support of the petition.
5. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject parcel is considered a conforming lot of record.

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

Strict application of the regulations of the district would not cause an unnecessary hardship. However, if the structure on the lot was not in existence and instead was a proposed new structure, the marsh setback would be 25 feet and the riparian buffer would not be required.

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

The conditions described above are not peculiar to the subject property.

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

Relief, if granted, would most likely not cause substantial detriment to the public good. If the lot was currently vacant and a new structure was proposed for the subject property, the marsh setback would be 25 feet and the structure would meet the requirement and the riparian buffer would not be required.

Summary of Findings

All of the conditions necessary for granting marsh buffer and riparian buffer variances appear not to be met.

Mr. Cohen asked what were the original measurements?

Mr. Goins stated it was 21’-3” and 6’-3” for the riparian.

Mr. Day stated that at the last meeting the Board asked the petitioner to look at some other alternatives. He said it looked like the petitioner just moved the pool back 3 feet.

Mr. Cohen stated that he remembered Board members asking the petitioner to look at an above ground pool with a deck so there would not be a variance needed.

CZBA ACTION: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals deny the petition as submitted. Mr. Felder seconded the motion and it was unanimously passed.

**RE: Petition of Susan & Claude Su
B-080725-00090-1
44 Moon River Drive**

CZBA ACTION: Mr. Murphy made a motion that the Chatham County Zoning Board of Appeals rehear the petition as submitted. Mr. Day seconded the motion and it was unanimously passed.

Present for the petition was Claude Su and Devin Spreen.

Mr. Goins gave the following Staff Report.

The petitioners are requesting a rehearing of a previously denied petition pursuant to section 10.5.6 of the Chatham County Zoning Ordinance. The petitioners are requesting approval of a 25 foot marsh buffer variance from the 50 foot marsh buffer requirement and a 10 foot riparian buffer variance from the 35 foot requirement of Section 4-12 of the Chatham County Zoning Ordinance, in order to expand an existing deck and construct an addition onto an existing single-family residence. The subject property, located at 44 Moon River Drive, is zoned R-1/EO (One-Family Residential/ Environmental Overlay).

Findings

1. The subject parcel is irregular in shape, with a minimum width of 65 feet and a minimum depth of approximately 424 feet. The parcel area is approximately 25,520 square feet. The development standards for lots served by public water and private sewer systems require a lot width of 75 feet and lot area of 15,000 square feet. The lot does not meet the minimum requirement for lot width; however it was created by an approved minor subdivision.
2. Section 4-12 of the Chatham County Zoning Ordinance establishes a minimum building setback from the marsh line at 50 feet for lots containing residential structures at the time the Environmental Overlay Ordinance was adopted. The existing structure does not meet the 50 foot marsh buffer requirement. The petitioner is requesting to encroach 25 feet into the buffer, in order to expand an existing deck attached and construct an addition onto an existing single-family residence.

3. Section 4-12 states that expansion of existing structures within the riparian buffer shall be limited to a maximum of 1400 square feet of vertical surface area for each 100 feet of lot width facing the marsh or waterfront. The minimum riparian buffer shall be 35 feet, 30 percent of which may be altered by pruning and selective clearing for access and to maintain view corridors. The existing structure does not meet the minimum 35 foot riparian buffer requirement. The petitioner is requesting to encroach 10 feet into the riparian buffer, in order to construct an addition onto an existing single family residence. The vertical surface area, in conjunction with the addition, within the riparian buffer will not exceed the maximum 1400 square foot allowed.

4. Staff has received multiple comments from the public both in opposition to and in support of the petition. Two surrounding property owners expressed their opposition to the variance. Staff met with these individuals on a site visit, during which they expressed their concerns regarding potential impact the development will have on flooding in the area and how the encroachment will degrade the marshland. They indicated that they would attend the public hearing and they have not submitted written comments. Two property owners indicated that they are in support of the petition, one verbally to staff and the other in written form.

5. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject parcel is considered a conforming lot of record.

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

Strict application of the regulations of the district would not cause an unnecessary hardship. However, if the structure on the lot was not in existence and instead was a proposed new structure, the marsh setback would be 25 feet and the riparian buffer would not be required.

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

The conditions described above are not peculiar to the subject property.

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

Relief, if granted, would most likely not cause substantial detriment to the public good. If the lot was currently vacant and a new structure was proposed for the subject property, the marsh setback would be 25 feet and the structure would meet the requirement and the riparian buffer would not be required.

Summary of Findings

All of the conditions necessary for granting marsh and riparian buffer variances appear not to be met.

Mr. Day asked if there was a roof on the deck?

Mr. Goins stated no.

Mr. Spreen stated that the addition has been moved out of the 25 foot riparian buffer and the steps also have been pushed back so they would not intrude any further into the marsh.

Ms. Dalquist stated that she brought in some Historical information which would show where the hammock started and that the land where the home sits probably has already been filled in.

Mr. Lanier stated that he supported the petition.

Ms. Carter stated that she supported the petition.

Ms. Dalquist stated that this property has been filled on the front and has been extended further to the left into the marsh buffer.

CZBA ACTION: Mr. Murphy made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted. Mr. Cohen seconded the motion. Motion was passed 5 - 1. Opposed to the motion was Mr. Felder.

**RE: Petition of Robert McCorkle, For
Lisa Simons
B-080728-00093-1
103 Lyman Hall**

Present for the petition was Robert McCorkle.

Mr. Goins gave the following Staff Report.

The petitioner is requesting approval of a 14 foot – six (6) inch marsh buffer variance from the 50 foot marsh buffer requirement of Section 4-12 of the Chatham County Zoning Ordinance in

order to construct a pool house. The subject property, located at 103 Lyman Hall, is zoned PUD/EO (Planned Unit Development/ Environmental Overlay).

Findings

1. The subject parcel is rectangular in shape, with a minimum width of 130 feet and a minimum depth of approximately 190 feet. The parcel area is approximately 24,829 square feet. The lot is served by public water and public sewer and meets the minimum requirements of the Planned Unit Development.
2. Section 4-12 of the Chatham County Zoning Ordinance establishes a minimum building setback from the marsh line at 50 feet for lots containing residential structures at the time the Environmental Overlay Ordinance was adopted. The existing structure meets the minimum marsh buffer requirement. The petitioner is requesting to encroach 14 feet – six (6) inches into the marsh buffer to construct a pool house.
3. Staff is not aware of any opposition to or support of the petition.
4. The petitioner’s original request consisted on a 20 foot marsh buffer variance from the 50 foot requirement and a five (5) foot riparian buffer variance from the 35 foot requirement. The new design relocates the pool house to 35.5 feet from the marsh as compared to 30 feet as previously proposed. This design eliminates the encroachment into the riparian buffer.
5. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject parcel is considered a conforming lot of record.

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

Strict application of the regulations of the district would not cause an unnecessary hardship. However, if the structure on the lot was not in existence and instead was a proposed new structure, the marsh setback would be 25 feet.

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

The conditions described above are not peculiar to the subject property.

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

Relief, if granted, would most likely not cause substantial detriment to the public good. If the lot was currently vacant and a new structure was proposed for the subject property, the marsh setback would be 25 feet and the structure would meet the requirement.

Summary of Findings

All of the conditions necessary for granting a marsh buffer variance appear not to be met.

Mr. McCorkle stated that on the revised plans the structure was moved out of the riparian buffer 5 foot.

CZBA ACTION: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted. Mr. Murphy seconded the motion and it was unanimously passed.

**RE: Petition of David Haynes, For
William Pfeifer
B-080822-00099-1
4 Parson Lane**

Present for the petition was William Pfeifer.

Mr. Goins gave the following Staff Report.

The petitioner is requesting approval of a five (5) foot – six (6) inch side yard setback variance from the 20 foot requirement of the Planned Unit Development, in order to construct an addition onto an existing single family residence. The subject property is located at 4 Parsons Lane. The property is within the PUD/EO (Planned Unit Development /Environmental Overlay) zoning classification.

Findings

1. Development standards established for this Planned Unit Development have been met. The subject parcel contains approximately 17,859 square feet, measuring approximately 111 feet wide and 123 feet deep. The parcel is an existing lot of record.
2. The petitioner is seeking the variance in conjunction with an addition onto the existing single family residence to be used as a closet.

3. The Landings Association requires a 20 foot side yard setback. However, the Chatham County Zoning Ordinance would only require a 5 foot side yard setback for a lot served by public water and sewer systems. The requested variance would establish a side yard setback of 14 feet – six (6) inches, which exceeds the standard of the Zoning Ordinance.
4. The Landings Association’s Architectural Review Committee approved the conceptual plan and variance on June 20, 2008. The approval letter has been submitted with the application.
5. Staff is not aware of any public comment on this petition.
6. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject property is considered a standard parcel within the PUD. The parcel meets the requirements for minimum area and minimum lot width. The property is an existing legal lot of record.

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

Strict application of the regulations of the 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. All the properties within this area are of similar size and shape compared to the subject property.

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

Relief, if granted, would not likely cause detriment to the public good or impair the purposes of the Ordinance.

Staff Recommendation

Staff recommends **APPROVAL** of the five (5) foot - six (6) inch side yard setback variance.

Mr. Pfeifer stated that he would like the variance in order to expand his closet. He said it was about 5 foot into the 25 foot setback, 15 foot from the remaining property line, and 35 foot from the neighbors house.

CZBA ACTION: Mr. Felder made a motion that the Chatham County Zoning Board of Appeals **approve** the petition as submitted. Ms. Hitch seconded the motion and it was **unanimously passed**.

**RE: Petition of Donald Culver
B-080822-00100-1
702 Whippoor Will Road**

Present for the petition was Clay Culver.

Mr. Goins gave the following Staff Report.

The petitioner, Donald C. Culver, For Donald M. Culver is requesting approval of an eight (8) foot – one (1) inch marsh buffer variance from the 50 foot requirement of Section 4-12 of the Chatham County Zoning Ordinance, in order to enclose an existing deck. The subject property is located at 702 Whippoorwill Road. The property is within the R-1/EO (One-Family Residential /Environmental Overlay) zoning classification.

Findings

1. The subject parcel is rectangular in shape, with a minimum width of 66 feet and a minimum depth of 195 feet. The parcel area is approximately 21,780 square feet. The R-1 district requires a minimum area of 15,000 square feet and a minimum lot width of 75 feet for lots served by public water systems and a private sewer system.
2. Section 4-12 of the Chatham County Zoning Ordinance establishes a minimum building setback from the marsh line at 50 feet for existing structures. The existing single family residence meets the minimum marsh buffer requirement. The petitioner plans to encroach eight (8) feet – one (1) inch into the 50 marsh buffer variance.
3. The petitioner is seeking an eight (8) foot – one (1) marsh setback variance from the 50 foot marsh setback requirement in order to construct an enclosed deck onto the rear of an existing residential structure. The proposed addition would be setback 41.99 feet from the marsh.
4. Staff is not aware of any public comment on this petition.

5. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject parcel is not considered a standard lot of record within the R-1 zoning classification. The lot does not meet the minimum requirement for lot width, however it was created as part of a legal subdivision. Although, the lot width does not meet the 75 foot requirement no topographical or other extraordinary situation exists that would deprive the owner of all reasonable use of the land.

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

Strict application of the regulations of the district would not cause an unnecessary hardship. However, if the structure on the lot was not in existence and instead was a proposed new structure, the marsh setback would be 25 feet.

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

The conditions described above are not peculiar to the subject property.

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

Relief, if granted, would most likely not cause substantial detriment to the public good. If the lot was currently vacant and a new structure was proposed for the subject property, the marsh setback would be 25 feet and the structure would meet the requirement.

Staff Recommendation

All the conditions necessary for granting a marsh buffer variance appear not to be met. Staff recommends **DENIAL** of the eight (8) foot – one (1) inch marsh buffer variance.

Mr. Culver stated that his parents owned the property. He said his mother had skin cancer and he felt that it would be easier on her to use the deck if it had a roof.

CZBA ACTION: Mr. Felder made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted. Mr. Day seconded the motion. Motion passed 5 - 1. Opposed to the motion was Mr. Cohen.

**RE: Petition of Wilson Roberts, For
Joseph & Pamela Usher
B-080822-00101-1
14 Marsh Harbor Drive**

Present for the petition was Wilson Roberts.

Mr. Goins gave the following Staff Report.

The petitioner, Wilson Roberts, For Joseph & Pamela Usher, is requesting approval of a six (6) foot height variance from the 36 foot maximum allowed pursuant to Section 4-12 of the Chatham County Zoning Ordinance, in conjunction with the construction of a new single family residence. The subject property is located at 14 Marsh Harbor Drive. The property is within the R-1-A/EO (One Family Residential /Environmental Overlay) zoning classification.

Findings

1. Development standards established for the R-1-A zoning require a minimum lot width of 70 feet and a minimum lot area of 12,000 square feet. The subject parcel contains approximately 65,340 square feet, measuring approximately 200 feet wide. The property is a standard lot of record.
2. Section 4-12 of the Chatham County Zoning Ordinance allows a maximum height of 36 feet. The petitioner is requesting a variance of eight (6) feet to allow a maximum height of 42 feet.

The petitioner is requesting the variance in conjunction with the construction of a new single family residence.

3. The petitioner has submitted an approval letter from the Marsh Harbor Neighborhood Association Architectural Review Committee. The Committee determined that the proposed height of the home is in conformance with the existing homes in the neighborhood. The homes in the area range from 36 feet to 44 feet, with an approximate average of 42 feet.
4. Staff is not aware of any public comment on this petition.
5. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in

unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an individual case upon a finding by the Board of Appeals that:

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

The subject property is considered a standard parcel within the zoning district. The parcel presently meets the requirements for minimum area and minimum lot width requirement of the district. The property is an existing legal lot of record.

- e. **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.

- f. **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. All the properties within this area are of similar size and shape compared to the subject property.

- g. **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.

Staff Recommendation

Staff recommends **APPROVAL** of the six (6) foot height variance.

Mr. Roberts stated that the reason the petitioner needs the height variance is because unlike most of the lots in the subdivision the lot is 14 foot above sea level.

Mr. Noah asked how long have the Usher’s owned the lot?

Mr. Roberts stated about 10 years.

Mr. Felder asked if there was any function on the third floor?

Mr. Wilson stated no.

CZBA ACTION: Mr. Felder made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted. Ms. Hitch seconded the motion. The motion passed 4 - 2. Opposed to the motion were Mr. Cohen and Mr. Day.

**RE: Petition of Ed Clarke, For
Sharon & Walter Bryant
B-080825-00102-1
11 Hardee Drive**

Present for the petition was Ed Clarke.

Mr. Goins gave the following Staff Report.

The petitioner is requesting approval of a nine (9) foot – eight (8) inch rear yard setback variance from the 50 foot requirement of the BurnsideView, Phase A subdivision plat, in conjunction with the construction of a new single family residence. The subject property is located at 11 Hardee Drive. The property is within the R-1/EO (One Family Residential/Environmental Overlay) zoning classification.

Findings

1. Development standards established for the R-1 zoning classification where dwellings are served by a public water supply system and a private waste system require a minimum lot width of 75 feet and a minimum lot area of 15,000 square feet. The subject parcel contains approximately 17,500 square feet, measuring approximately 100 feet wide and 175 feet deep.
2. The BurnsideView, Phase A subdivision plat requires a 50 foot front setback as well as a 50 foot rear yard setback. These requirements are more stringent than the Chatham County Zoning Ordinance, which would require a 25 foot front yard setback and a 25 foot rear yard setback for this property. However, the buildable area consists of an 86 foot wide by 75 feet deep space, which equates to roughly 6,450 square feet and is ample area to construct a single family residence. No topographical or other extraordinary situation exists that would deprive the owner of all reasonable use of the land.
3. The petitioner is seeking the variance in order to construct a new single family residence on undeveloped land.
4. Staff is not aware of any public comment relating to this petition.
5. In accordance with Section 10-6.3 of the Chatham County Zoning Ordinance, the Board of Appeals may authorize upon appeal in specific cases such variance from the terms of the regulations as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions will, in an individual case, result in unnecessary hardship, so that the spirit of the regulations will be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in an

individual case upon a finding by the Board of Appeals that:

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

The subject property is considered a standard parcel within the zoning district. The parcel presently meets the requirements for minimum area and minimum lot width requirement of the district. The property is an existing legal lot of record. No topographical or other extraordinary situation exists that would deprive the owner of all reasonable use of the land.

- 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. All the properties within this subdivision are of similar size and shape compared to the subject property and are subject to the same setback requirements.

- 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 likely cause detriment to the public good or impair the purposes of the Ordinance. A single family residence built 40 feet – four (4) inches from any property line would not be considered detrimental to any adjacent property owner and would not impair the intent of the Chatham County Zoning Ordinance.

Staff Recommendation

All of the conditions necessary for granting a rear yard setback variance appear not to be met. Staff recommends **DENIAL** of the nine (9) foot – eight (8) inch rear yard setback variance from the 50 foot requirement.

Mr. Felder asked if there used to be a structure on the lot?

Mr. Noah stated yes.

Mr. Cohen asked if this subdivision required a greater setback than the county?

Mr. Goins stated yes.

Mr. Clarke stated when the design of the house was done they were unaware of the building pad that was established in the neighborhood.

Mr. Cohen stated that the application says that the request is for 9’-8” rear yard setback from the 50 foot requirement.

Mr. Clarke stated that on the plat there is a 50 foot front setback and a 75 foot building pad from that point back to the marsh with the proposed house laid out is 50 foot off the marsh.

Mr. Noah stated he felt the difference was between the marsh and the survey line.

Ms. Hitch asked if the petitioner could shift the house back 9’-8” feet?

Mr. Noah stated then the petitioner would have to have a variance to the front yard.

Mr. Murphy stated he did not see the 9’-8” feet on the plans. He said it looked like the petitioner was requesting 17.5 feet.

Mr. Sebek, Chatham County Zoning Administrator, stated that the 9’- 8” feet came off of the building plans.

Mr. Clarke stated that they are requesting a 17 foot variance.

Mr. Noha asked if the petition was correctly advertised?

Mr. Sebek, Chatham County Zoning Administrator, stated no it was advertised as a 9’-8” foot variance.

Mr. Noah stated that in order for the Board to grant anything larger than the 9’-8” foot variance, the petitioner will have to come back next month after the right variance has been properly advertised.

CZBA ACTION: Mr. Cohen made a motion that the Chatham County Zoning Board of Appeals continue the petition until the next regularly scheduled meeting on October 28, 2008. Mr. Felder seconded the motion and it was unanimously passed.

**RE: Petition of Radford Timothy Daniel, For
H & K Enterprises
B-080804-00095-1
6703 Johnny Mercer**

CZBA ACTION: Mr. Murphy made a motion that the Chatham County Zoning Board of Appeals move the above petition to the end of the agenda. Mr. Day seconded the motion

and it was unanimously passed.

Present for the petition was Mark Tate.

Mr. Goins gave the following Staff Report.

The petitioner is requesting approval of a change to a non-conforming use pursuant to Section 8-4 of the Chatham County Zoning Ordinance. The subject property is located at 6703 Johnny Mercer Boulevard. The property is within the P-D-N/TC (Planned Development for Certain Nonconforming Uses/Town Center Overlay) zoning classification.

Findings

1. The petitioner desires to establish a non-conforming commercial school on a site located at 6703 Johnny Mercer Boulevard. The site is presently occupied by a multi tenant shopping center.
2. In accordance with Section 8-4 of the Chatham County Zoning Ordinance a non-conforming use shall be permitted to change to another non-conforming use under certain specified conditions including:

- a. **A change from one non-conforming use to another non-conforming use shall be permitted only within R and I-P districts.**

The subject property is not located within the R or I-P zoning classifications. However, the Zoning Administrator has made the interpretation that a change from one non-conforming use to another non-conforming use may take place in the P-D-N zoning classification.

- b. **A change from one non-conforming use to another non-conforming use shall be permitted only in the case of non-conforming use of buildings.**

The commercial school activity will occur in an existing building and entirely indoors.

- c. **A change from one non-conforming use to another non-conforming use shall not be permitted in the case of a non-conforming use, which is primarily a use of open land.**

The commercial school activity will occur in an existing building entirely indoors.

- d. **A change in the non-conforming use of a building shall only be permitted when the building in which the change in non-conforming use proposed is one, which was specifically designed for use as a commercial building.**

The shopping center that presently exists on the site was designed specifically for commercial use and was constructed in 1971.

e. A non-conforming use shall only be changed to one of the following specifically listed uses:

- 1. Food drug stores.**
- 2. Personal service shops: barbershops, beauty shops, shoe repair, dry cleaning and laundry pick-up stations, Laundromats, and watch repair.**
- 3. Clothing stores and dry goods.**
- 4. Home furnishings and hardware.**
- 5. Specialty shops: Gift shops, florist shops, jewelry shops, hobby shops, camera shops, book stores, stationery stores.**
- 6. Offices: professional offices, real estate offices, financial agencies, insurance offices, sales offices; provided, there shall be not sale or display of equipment on the premises unless otherwise permitted in this Section.**
- 7. Contracting and repair services: cabinet shop, electrical contracting, plumbing contracting, mechanical systems contracting, and small equipment repair. Provided, there shall be no exterior storage, the activity is carried on wholly within the enclosed building, and the use does not produce noise in violation of the standards or characteristics set forth in the Chatham County Noise Ordinance as incorporated herein by reference.**
- 8. Commercial school provided there are three instructors or less employed by the school**
- 9. Printing and letter shops**
- 10. Pet supply and grooming business**

A commercial school is among the listed permitted uses allowed to change from one non-conforming use to another non-conforming use, with the limitation of 3 instructors.

f. Nothing in this Section shall prevent a non-conforming use from being replaced by an identical non-conforming use.

The petitioner’s stated intent is to replace a pet supply business with a commercial school. The proposed non-conforming use is not identical to the previous use.

- g. A change from one non-conforming use to another shall be subject to the limitations set forth in Sections 8-2 and 8-3 of this Section.**

The limitations of Sections 8-2 and 8-3 relating to the legal establishment of the non-conformity have been applied.

- h. A change from one non-conforming use to another non-conforming use shall be permitted only with the approval of the Zoning Board of Appeals upon a finding that:**

- 1. *The requested use will not generate more vehicular or pedestrian traffic than the existing or last permitted use.*

The subject property was most recently used by a pet supply business. Based on the ITE (Institute of Transportation Engineers) Trip Generation Manual the amount of peak hour vehicular traffic generated by a pet supply store is 4.96 trips per 1,000 square feet. The closest classification in the manual to a commercial school is a Junior/Community College. The trip generation rate for this use is 2.99 trips per 1,000 square feet. The lack of sidewalks along Johnny Mercer Boulevard decreases the likelihood of any pedestrian traffic to the site. Thus, it can be reasonably assumed that commercial school will not generate more vehicular/pedestrian traffic than a pet supply use.

- 2. *The requested use will not constitute a greater negative visual impact on the surrounding area than the existing or last permitted non-conforming use.*

The proposed use is not likely to create a greater visual impact than that that currently exists.

- 3. *The requested use will generate no greater noise than generated by the existing or last permitted non-conforming use.*

The extent to which the current use generates noise is unknown. It is not likely that the proposed commercial school will generate an increased level of noise when compared to a pet supply business.

- 4. *The layout and operating characteristics, in addition to the above listed criteria, will be of such design as to minimize the impact of the requested use on surrounding uses.*

A site plan was not submitted with the petition nor are the operating characteristics known.

Staff Recommendation

All the conditions necessary to change a non-conforming use to another non-conforming use appear to be met. Staff recommends **APPROVAL** of the change from a non-conforming pet supply business to a non-conforming commercial school with the following conditions:

1. No more than three (3) instructors shall be employed by the school.
2. No religious ceremonies, events, or related activities, exclusive of educational activities, shall take place on the premises.
3. Any activity to be found in conflict with intent of a commercial school shall deem this approval void.

Mr. Felder asked if this was one of the situations in the ordinance that the use is not allowed unless the Board approves it?

Mr. Goins stated that it was not in that section, it was in the non-conforming section 8-4.

Mr. Cohen stated that on the staff report it says that a commercial school will not generate more vehicular/pedestrian traffic than a pet supply use. He said he felt a school would have more traffic than a pet store.

Mr. Goins stated that the number was created by the ITE Trip Generation Manual. He said the amount of peak hour vehicular traffic generated by a pet supply store is 4.96 trips per 1,000 square feet. The closest classification in the manual to a commercial school is a Junior/Community College. The trip generation rate for this use is 2.99 trips per 1,000 square feet so there would be a decrease based on the Trip Generation Manual.

Mr. Noah asked if plans were submitted to County Engineering?

Mr. Sebek, Chatham County Zoning Administrator, stated yes.

Mr. Tate stated that the petitioners would like to start a life learning center. The traffic that would be coming in and out of the shopping center would not be any greater than a DUI school. He said this would be a faith based life success learning center with no more than 3 instructors.

Mr. Cohen asked what is a life learning center?

Mr. Tate stated they would conduct different faith based classes working on life success.

Mr. Cohen asked what would be the ages?

Mr. Tate stated all ages, but primarily adults.

Mr. Day asked about how many students?

Mr. Tate stated about 20 at a time.

Ms. Hitch asked how much parking was on the property?

Mr. Tate stated that he was not exactly sure.

Mr. Day asked were the parking requirements based on the square foot?

Mr. Goins stated that the parking requirements were a site plan issue. He said this was a use approval.

Mr. Noha asked about how many classes would there be a day?

Mr. Daniel stated maybe 2 to 3 per week.

Mr. Day asked what would be the hours?

Mr. Daniel stated that there may be some classes during the day for about 30 minutes, but most of the life success classes will be in the evening.

Mr. Sebek, Chatham County Zoning Administrator, stated the Zoning Ordinance says that a commercial school is required to have 1 space per 3 fulltime students plus 1 for each two employees. He said so for 20 students and employees there would be a 8 space requirement.

Mr. Cohen asked if this would be a counseling center or a church?

Mr. Tate stated it will not be a church. He said it would be a faith based educational center.

Mr. Day asked if the center was a nonprofit organization?

Mr. Daniel stated yes.

Mr. Day asked do the student pay for the classes.

Mr. Daniel stated most of the time they will not. He said if they have a guest speaker then they may.

CZBA ACTION: Mr. Murphy made a motion that the Chatham County Zoning Board of Appeals approve the petition as submitted based the following conditions: 1. No more than three (3) instructors shall be employed by the school 2. No religious ceremonies, events, or related activities, exclusive of educational activities, shall take place on the premises 3. Any activity to be found in conflict with intent of a commercial school shall deem this approval void. Mr. Felder seconded the motion. Motion passed 5 - 1. Opposed to the motion was Mr. Day.

RE: Other Business

RE: Adjournment

There being no further business to come before the Chatham County Zoning Board of Appeals the meeting was adjourned approximately 10:45 A.M.

Respectfully submitted,

Geoff Goins,
Assistant Secretary

GG/jm