



## Chatham County Zoning Board of Appeals

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Arthur A. Mendonsa Hearing Room  
December 20, 2022 - 9:00 A. M  
Meeting Minutes

### DECEMBER 20, 2022 CHATHAM COUNTY ZONING BOARD OF APPEALS

Members Present: James Coursey, Chairman  
Robert Vinyard, Vice Chairman  
Kewaan Drayton  
Ashley Field  
Benjamin Polote

Members Absent: Coren Ross  
Meredith Stone

Others Present: Pamela Everette, Esq., Assistant Executive Director  
Marcus Lotson, Development Services Director  
Melissa Paul-Leto, Development Services Planner  
Julie Yawn, Systems Analyst  
Mary E Mitchell, Administrative Assistant

Chatham County Staff Present: Yolanda Washington

#### I. Call to Order and Welcome

##### [1. Call to Order and Welcome](#)

**Mr. Coursey** called the meeting to order at 9:02 a.m. He explained that this is a quasi-judicial proceeding. All those wishing to give testimony during these proceedings will please sign in. Witnesses will be sworn-in prior to giving testimony. All proceedings of the Chatham County Zoning Board of Appeals are recorded. Decisions of the Chatham County Zoning Board of Appeals are final. Challenges to the decisions of the Chatham County Zoning Board of Appeals must be filed through the Superior Court of Chatham County.

**Mr. Coursey** introduced and welcomed the two new members. They are **Mr. Kewaan Drayton and Ms. Ashley Field**.

#### II. Pledge of Allegiance

##### [2. Pledge of Allegiance](#)

The Pledge of Allegiance was recited in unison.

#### III. Notices, Proclamations and Acknowledgements

#### IV. Petitions Ready for Hearing

#### V. Approval of Minutes

##### [3. Approve October 25, 2022 Meeting Minutes](#)

[October 25, 2022 Meeting Minutes.pdf](#)

**Motion**

The Chatham County Zoning Board of Appeals does hereby approve the October 25, 2022 Meeting Minutes.

**Vote Results ( Approved )**

Motion: Robert Vinyard

Second: Benjamin Polote, Jr.

James Coursey	- Aye
Meredith Stone	- Not Present
Robert Vinyard	- Aye
Benjamin Polote, Jr.	- Aye
Kewaan Drayton	- Aye
Ashley Field	- Aye

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

[4. Request to be withdrawn | Variance request to the minimum rear yard setback | 2 Marsh Island Lane | Rezone | ZBA-1122-000336](#)

**Motion**

The Chatham County Zoning Board of Appeals does hereby approve the request to withdraw 2 Marsh Island Lane from the Agenda.

**Vote Results ( Approved )**

Motion: Benjamin Polote, Jr.

Second: Robert Vinyard

James Coursey	- Aye
Meredith Stone	- Not Present
Robert Vinyard	- Aye
Benjamin Polote, Jr.	- Aye
Kewaan Drayton	- Aye
Ashley Field	- Aye

**VII. Consent Agenda**

**VIII. Old Business**

**IX. Regular Agenda**

[5. 5700 Ogeechee Road | variance to the maximum height restrictions | 1122-000333-ZBA](#)

[application.pdf](#)

[MAP.pdf](#)

[Building Elevation.pdf](#)

[Context Aerial.pdf](#)

📎 [Staff Report.pdf](#)

📎 [Lettter of Denial.pdf](#)

**Ms. Melissa Paul-Leto** gave the staff report. The petitioner is requesting variances from Section 4-6.1 of the Chatham County Zoning Ordinance, Development Standards for Dwellings, which states that the maximum height of a structure shall be 36- feet. The applicant is requesting two variances for a proposed multi-family residential development consisting of two three-story buildings and four four-story buildings at 5700 Ogeechee Road. The requested variances are the following:

- The two three-story buildings height variance of 11-feet and 6-inches in height.
- The three four-story buildings height variance of 22-feet and 6-inches in height

**Ms. Leto** explained that staff finds that:

1. The subject property consists of one existing undeveloped parcel approximately 11.10 acres in size. The parcel is on the northwest side of Ogeechee Road between Cottonvale Road and Berwick Boulevard. The zoning classification is PUD-C (Planned Unit Development – Community) as is part of the Berwick Master Plan which was approved in 2000. The Master Plan includes land use designations but does not include height regulations.
2. The height variance request is in part driven by the building design having a pitched roof. There will be a combination of three and four-story buildings. This number of stories cannot be achieved with a flat roof design,
3. The parcel is approximately 11.10 acres in size with 7.5 acres upland. The density for the parcel is 24 units per acre. The petitioner is proposing up to 180 units.
4. The development pattern adjacent to the subject property includes a car wash facility, a shopping center with a grocery store, detached single-family residential housing, and an undeveloped parcel proposed for multi-family residential use. The applicant's proposal includes multifamily residential buildings, an amenity building as well as outdoor space for the common use of the residents.
5. Under the current zoning regulations, the maximum height permitted in the district is 36-feet. For the purpose of a multifamily building, the height could accommodate three stories, but would likely result in a flat or very low-pitched roof. It could not, however, accommodate a four-story building at all. The petitioner's proposed buildings do not exceed four stories in height. While a variance would allow additional height, it would also decrease the footprint of the structure and allow for greater architectural flexibility specific to ceiling heights and roof pitch. Per building code regulations, buildings exceeding three stories require elevators.
6. Staff finds that some change is likely justified due to modern building techniques and changes to the Flood Damage Prevention Ordinance. It is likely that a recommendation to amend the maximum height limit is forth coming. The current regulation of 36-feet is from the original 1962 Ordinance and was related to fire protection.
7. The petitioner has provided a site plan with elevations that outline the areas proposed for each variance. The areas identified as proposed to be a maximum of 47-feet and 6-inches are on the southwest side of the parcel and those proposed to be 58-feet and 6-inches, not exceeding 60-feet, are internal to the site. These include the buildings shown on the site plan.
8. Any proposed development would be required to adhere to all building requirements of Chatham County through their permitting process. The only action being considered by the Zoning Board of Appeals is the requested height variances, not site plan approval.
9. 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 because of its size, shape, or topography.

**Staff Comment:** Dimensionally, the property is different from other properties in the vicinity. The site layout is driven significantly by the unorthodox shape, which is unlike more conventional parcel geometry in the area.

(b) The application of this chapter to this particular piece of property would create an unnecessary hardship.

**Staff Comment:** Applying the maximum permitted height does not prohibit development on the property. Based on this finding, no hardship is created.

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

**Staff Comment:** The dimensions of the property are peculiar to the subject property.

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

**Staff Comment:** The current regulations for height are under review by staff. They limit architectural creativity for three story (and taller) buildings. A variance to the regulations in this case is not likely to impair the intent of the Zoning Ordinance if building placement is such that it does not impact adjacent residential properties. Relative to potential detriment, staff finds that the requested variances are not likely to be detrimental because the Berwick Planned Development accounted for a mix of housing types and the subject parcel is identified as a multifamily use.

**Ms. Leto** reported that based on the findings identified in the staff report, staff recommends approval of the height variances requested. She entertained questions from the Board.

**Mr. Coursey** stated he understands that staff has been looking at the height requirement under the Ordinance for quite some time. He asked staff if they can give the Board an understanding of where they are in this process.

**Mr. Lotson** explained that they have been in discussion with County management as it relates to improvements of the County's Ordinances. He believes that the change in leadership at the County has held this timeframe back. However, he believes that the first quarter of 2023, they will revisit this with Chatham County.

**Mr. Coursey** asked Mr. Lotson to give the Board some perspective of why the limitations have been at the present level for so many years.

**Mr. Lotson** asked Mr. Coursey if he was asking about the terms of the height maximum requirements.

**Mr. Coursey** answered yes.

**Mr. Lotson** explained that when the height maximum was originally established when the County's Ordinance was written, 36 feet was not out of the ordinary. For a multiple family building, this was fairly common, and buildings could be built within that height. A lot of the designs at that time, going back to the 1960s. A lot of the multifamily that got built in the 1980s, primarily some two-stories and some of the three-stories, but the current designs in some of the three-stories are typically taller than 36 feet. The other issue was that back then, it was mostly driven by fire protection because buildings taller than that were an issue from a fire protection standpoint. But this is no longer an issue. Therefore, they believe these changes can be brought forth now to both accommodate more current design trends as well as the

lack of the issue with fire protection. Also, in the multifamily world, it seems to be more common to build four-story buildings. Before it was not because it was prohibited because of elevators. This cause has come down dramatically. Therefore, a lot of multifamily developers are now building four-story buildings.

**Mr. Coursey** stated he remembers this issue came before the Board and he believes that they have granted variances for four story buildings.

**Mr. Lotson** explained that height variances have been granted in this corridor for four story buildings in the past.

**Mr. Vinyard** said that most of these older apartments were 8-foot ceilings and flat roofs. But now, they are building apartments with higher ceilings and of course, flats roofs are out. He stated that Chairman Coursey has already brought up that they have deviated from the norm by doing this before. He does not like to do it, but they have, and he has been on the Board for quite some time.

**Mr. Coursey** stated he understands that staff is reviewing this matter in anticipation of hopefully the Height Ordinance will be changed in the future.

### **PETITIONER COMMENTS**

**Attorney Josh Yellin** stated that he was present on behalf of the petitioner, Olympus Ventures, LLC. Attorney Yellin said Ms. Della Kolpin, Managing Director, was accompanying him at today's meeting.

**Attorney Yellin** explained that they are proposing to do a multifamily apartment development at 5700 Ogeechee Road. He thanked the staff for their report and for the recommendation of approval for the variance request. He wanted to reiterate some of the points that have already been mentioned. There is a 36-foot cap that is currently in the Ordinance. But he believes this is the result of antiquated standards that have been addressed through modern technology and enhanced fire systems.

**Attorney Yellin** stated that today's request for the height variance has nothing to do with the density of the project. The project is 180 units, whether it is three stories, four stories, five stories, or six stories. They are only seeking to go to four stories, but the need for this variance is for primarily three reasons. As Mr. Vinyard mentioned, 1. 9-foot ceiling height. In order to have a well-designed and property that can be rented to new tenants, 9-foot ceiling is the norm. People do not want to live in 8-foot cramped ceilings; 2. More importantly in the post-COVID world, is outdoor greenspace. By going higher, they can reduce their building footprint and provide more amenities. As currently proposed, they are looking at 45% of the land to be preserved as open space for this project. 3. The last issue regarding the height variance is creating a pitched roof so that it can look and feel like a residential, a more suburban project. Whereas a flat roof would probably be out of keeping with the area and would feel too downtown, too urban of a development. Therefore, the pitched roof from an architectural design standpoint gives it a more homely and livable feel.

**Attorney Yellin** said for these three reasons, they are requesting the height variance. As has been said, this variance was approved recently along Highway 17 and Ogeechee Road. In fact, this Board approved two similar variances last year and one variance was approved in 2017. Therefore, this is a common variance as everyone knows, the modern reality of apartment design includes these higher ceilings; includes increased greenspace and includes making the communities a little more livable. Attorney Yellin said they appreciate staff's recommendation for approval and respectfully requested that the Board approve their variance request.

**Mr. Coursey** asked Attorney Yellin if there is anything particularly different about this footprint or site that would call for a height variance such as this.

**Attorney Yellin** explained that in terms of the actual layout of the site, what is unique and particular to the site is he said [pointing to a building which he believed is a dialysis center] the property line is in an angle with a terra zone that services both properties. Therefore, in terms of the layout, they do not have four quarters here. Therefore, they are trying to accommodate the unique geometry of the site as well. He said in his opinion, an incredible job was done in planning this development for the multifamily by pushing the four-story building as far away as possible from the townhome development that is adjacent to the site. There is almost 175-foot distance between the proposed buildings and the nearest residential

development. Therefore, they are trying to fit this in a way that both fits with the shape of the site, but also in a way that is also respective of the neighboring properties.

## **PUBLIC COMMENTS**

**Ms. Marilyn Jo Curtis, resides at 66 Travertine Circle**, came forward and said she lives in the Stonelake Subdivision which will be affected by the apartments. Ms. Curtis was sworn-in by Mr. Coursey.

**Ms. Curtis** said they received the public notification letter. In looking at the printed version of the site map, there was a little confusion. In surveying some of her neighbors, some are out of town because of the Christmas holidays, and others said this does not pertain to them as it is on Ogeechee Road. Therefore, there was some concern as they believed that it would not directly be behind them. Ms. Curtis explained that the reason she is opposing the height variance is that their neighborhood consists of one and two-story buildings. These buildings basically have the same type of roofline. This is a part of their Homeowner's Association [HOA], which maintain the roofs. In looking at three-stories, this means that they will be looked down upon their townhouses, even though, there is a distance in-between. She feels that this would be like David and Goliath as far as the appearance. Four-stories seems very extreme. Ms. Curtis said her biggest concern is that the traffic and density will affect their neighborhood. She said she has a one-story house, and it will be swamped.

**Mr. Coursey** asked the staff to pull up the aerial map for this property. He asked Ms. Curtis to look at the aerial map that was shown on the screen. He asked her if the subdivision she lives in is directly behind.

**Ms. Curtis** answered yes, directly behind. The Stonelake Subdivision was established in 2003-2005. Pointing to an area, she said all of these houses are a part of the subdivision. This is what is affected. She said that all of this is Travertine Circle and she pointed to where she lives.

**Mr. Lotson** pointed to an area and said in a broader context, this is Highway 17, Ogeechee Road is down here, the Kroger at Berwick, and here is Berwick Boulevard.

**Ms. Curtis** said because of the traffic impact, it takes more than ten minutes just to get off of Berwick Boulevard and get onto Coastal Highway. Sometimes when there is an accident, sometimes the area where the dialysis center is located, many people turn into this area to travel. Her concern is that the impact, the number, and she is not trying to do away with family homes, etc., but it will have an effect upon this community. As far as the density and the numbers that are involved. When you add another story, you have more people also. Ms. Curtis said that the three stories are not facing their subdivision; they are facing something else. It looks like vacant land; but the four stories are right in their backyard. They have less than patio homes and many of the residents like to sit outside and enjoy their afternoons. Ms. Curtis said she really does not believe that the neighbors know what is going on. She did not get an opportunity to do a survey, and no one is present from her HOA. They have had some changes in their structure, which is the management. Therefore, this somewhat caught everybody off guard. As she had said, everybody she talked with said that is down on Ogeechee Road. She said, "yes" it is on Ogeechee Road, but it is behind Cottonvale and behind a carwash and some other businesses.

**Ms. Curtis** asked the Board to reject the four-story buildings.

**Mr. Coursey** asked Attorney Yellin to address Ms. Curtis's concerns regarding setbacks, buffers, etc.

**Attorney Yellin** thanked Mr. Coursey for the opportunity to respond to the public comments. He said as Ms. Curtis pointed out, there are some natural buffers between the properties. He showed the Board a canal that services Ms. Curtis's home. He said in-between these buildings and the four-story buildings, they are proposing 174 feet. They do not intend to push the building any closer to the property line. Therefore, they have laid this out in a way to maximize the buffer and distances between the tallest building and the residential properties. While he realizes that it is not the purview of this Board, when they were at the MPC, traffic did come up. A part of the reason that they did receive unanimous approval from the MPC for this rezoning, is that the change in use from commercial to residential actually reduced the traffic impact on the neighborhood by approximately 60%. As he recalls, this site has 11 acres and was slated to be big box retail; and going from big box retail to multifamily apartments in this area, was a 60% reduction in traffic impact on the neighborhood. Particularly, the developer is excited about this site

because it is in close proximity to Kroger, Starbucks, and the car wash. If the tenants want to go to these facilities, they will not need to drive on Ogeechee Road. They do their shopping, go out to eat, go to the gym next door without having to take multiple trips. Therefore, they are excited about this project because it does reduce the traffic impact on Ogeechee Road and on the Berwick Plantation area. It was designed in such a way to maximize the amount of space between this property and the adjacent subdivision, which is shown as 174 feet of distance between the four-story building and the residential structures.

**Attorney Yellin** additionally pointed out the height of the building. He said a lot of the height that makes up these buildings, is not windows. It's the pitched roof. He explained that the third level ends at 30 feet. They have another 17 feet that is roofline. It is not people peeping in other people's property. It is architectural details and not windows. He stated again that he was happy to respond to the public comments and respectfully asked the Board to approve their variance request.

**Mr. Coursey** said he wanted to address one point Ms. Curtis made. It was Ms. Curtis's belief that four floors mean more people. He believed Mr. Yellin said they were maximizing per acre here. Therefore, this means that more people will not be here.

**Attorney Yellin**, in an answer to Mr. Coursey's statement above, said that's correct. The increase in height did not increase the density of this project. The greenspace of this project was increased.

**Mr. Jay Lee** was online. Mr. Lee was sworn-in by Mr. Coursey.

**Mr. Lee** said his first question was about the four-story buildings. He asked if the height measurement is through the eave or the pitch of the roofline.

**Attorney Yellin** answered that the height is to the ridge.

**Mr. Lee** said the ridge height is 50 1/2. Is this the same as the pitch of the ceiling? He asked if the plans will be made public for those attending the meeting,

**Attorney Yellin** answered that the plans are public. The plans are published online.

**Mr. Lotson** informed Mr. Lee that the plans are on the MPC website, and he may download the plans. If he has trouble downloading the plan, Mr. Lotson told him to contact the MPC staff and the plans will be emailed to him.

**Ms. Curtis** said she may be incorrect, but when she was reviewing the information, it showed 24 units per acre. Is this correct?

**Mr. Lotson** answered that 24 units per acre is correct.

**Ms. Curtis** said there are 11 acres. Therefore, this would be more than what is proposed for the residential.

**Attorney Yellin** said the proposal calls for 180 units. The 24 units per acre is the maximum that could be permitted. But there are site plan constraints that go into it. Therefore, they can never maximize the project because roads and stormwater must be put in.

## **BOARD DISCUSSION**

**Mr. Vinyard** said he does not like to grant exceptions to the rules. However, this Board has done it; especially along this stretch of highway, which has apparently become full of these apartment projects. The apartments are needed because people need places to live. Architecturally, though, he would rather have four-story apartment buildings in back of his property rather than another Kroger. Therefore, due to the recommendation of staff and the fact that they have at least three times granted variances to the Ordinance, plus the fact that the Ordinance, in fact itself, is under review, he was in agreement with the staff recommendation.

**Mr. Coursey** said he is persuaded by the fact that the County has been reviewing the height

requirements under the Zoning Ordinances for some time. It appears that it is moving in the direction of reason to raise the height limit. He is in favor of the request.

**Mr. Coursey** entertained a motion.

**Motion**

The Chatham County Zoning Board of Appeals hereby approve the petitioner's height variance requests for 5700 Ogeechee Road The requested variances are as follows:

The two three-story building height variances of 11-feet and 6-inches in height.

The three four-story buildings height variance of 22-feet and 6-inches in height.

**Vote Results ( Approved )**

Motion: Robert Vinyard

Second: Benjamin Polote, Jr.

James Coursey	- Aye
Meredith Stone	- Not Present
Robert Vinyard	- Aye
Benjamin Polote, Jr.	- Aye
Kewaan Drayton	- Aye
Ashley Field	- Aye

[6. 431 Shipyard Road - Variance Request to Allow a Second Dwelling Unit - File no. 1022-000321](#)

[Ortho.pdf](#)

[431 Shipyard permit.pdf](#)

[Renovated Building B.pdf](#)

[431 Shipyard \(CARRIAGE\).pdf](#)

[Email Opposed.pdf](#)

[ortho 2.pdf](#)

[Damaged Building B.pdf](#)

[Staff Report 0321.pdf](#)

[Exhibit 1 - Opponents Aggregate.pdf](#)

[Exhibit A - Section 10-6.3 Request for a Variance - Blackston.pdf](#)

[Exhibit B - Chatham County Inspection Department 1996 Letter - Blackston.pdf](#)

[Exhibit - C - Blackston Aggregate.pdf](#)

**Mr. Marcus Lotson** gave the staff report. The petitioner is requesting a variance to allow a second residential dwelling on a lot where one residential dwelling is permitted. The subject property is a triangular lot, approximately 4/10 of an acre on Shipyard Road north of Butler Avenue. The property is developed with a two-story single-family residence (Building A) and a second building in the rear (Building B) that includes one bedroom, one bathroom, a full kitchen and living space. By definition, this constitutes a dwelling unit.

**Mr. Lotson** explained that the findings are:

1. Section 3-3 of the Chatham County Zoning Ordinance states, in part, that ...'there shall be no more than one principal building or use upon any lot.' Because both structures on the subject property



include full housekeeping facilities, they are each a principal building.

2. When the property was originally developed, Building "B" was constructed prior to Building "A" by a previous owner. County records indicate that this occurred in 1984. Since that time, the property has included two residential dwellings. The current owner acquired the property earlier this year.
3. Building "B" sustained hurricane damage in 2016. The current owner, upon purchasing the property, applied for, and received permits from Chatham County for reconstruction and renovation. The reconstruction included replacing the damaged roof and rear wall which left the structure open to the elements. The renovation consisted of a full interior demolition and replacement.
4. Upon requests for a Certificate of Occupancy from Chatham County, the owner was made aware that the County could not issue a CO because the property was noncompliant with Section 3-3 of the Zoning Ordinance as it relates to having multiple principal buildings on a single lot of record. The owner was advised that relief from this requirement could be sought through the Zoning Board of Appeals.
5. 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 this particular piece of property in question because of its size, shape, or topography.

**Staff Comment: Although the shape of the property is peculiar, it is not relevant to the requested variance.**

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

**Staff Comment: The application of Section 3-3 would require that the applicant convert building "B" from a dwelling to an accessory building. Removal of the kitchen facilities would make the building conforming as it would no longer be considered a dwelling unit. The original construction was under a previous owner and the work performed by the current owner was permitted by Chatham County. Based on these findings, removal of the kitchen would be an undue hardship.**

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

**Staff Comment: These conditions are peculiar to the subject property. Staff is unaware of any other conditions such as this in the area. Staff does not believe they have brought a case such as this before the Board.**

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

**Staff Comment: Based on previously stated findings, a variance is not likely to be a detriment to the public. The structure has existed for approximately 40 years. The use of Building B as a residence does not impact nearby properties any more than it could as an accessory building. The building footprint has not changed, the use has not been expanded and applicant sought the proper channels for approval of the work on site.**

**Mr. Lotson** reported that based on the findings in the staff report and the variance criteria, staff recommends approval of the requested variance to allow a second residential dwelling at 431 Shipyard Road. Mr. Lotson informed the Board that an email is attached to the agenda from the residents of 262 Shipyard Road opposing the variance. He also believed that some residents were present at today's meeting to speak on this petition. Mr. Lotson entertained questions from the Board.

**Mr. Coursey** asked Mr. Lotson how this happened!

**Mr. Lotson** explained that a number of things in terms of the history of this property. He stated in terms of the history of this, related to what occurred most of which had to do with the original construction on the site Building B, based on the information that staff has, was the first building that was constructed on this property. Later, Building A was then permitted to be built on this site. This is where things really go off track from a permitting legality standpoint.

**Mr. Coursey** said this leads to his second question. How did building A get permitted?

**Mr. Lotson** stated that he could not answer that question. Staff looked into this and all they know is that permits were issued for building A. This was done in 1984. Whoever issued that permit at the time was either unaware of the regulation or missed it, and granted the permit for building A.

**Mr. Coursey** said this is an R-1 lot. Correct?

**Mr. Lotson** answered yes.

**Mr. Coursey** said it is correctly shown that R-3-3 [he paraphrased] that thou shall not build two residences on a single lot. But this is what the Board is being asked to approve this morning. He is going into this argument and this issue with a little trepidation. Mr. Coursey said he did not see anyone from the County to tell him how a permit can be issued to build a second residence on a single-family lot. It appears that this has happened twice on this same property.

**Mr. Lotson** said to clarify Mr. Coursey's point, the original construction of Building B was permitted and then Building A came along and got permitted.

**Mr. Coursey** said he understood that.

**Mr. Lotson** explained that when the current applicant purchased the property; he sought permits to renovate building B, which was simply roof replacement and interior reconstruction. As he understands it, Building B was essentially gutted and replaced with what was there. The kitchen, bedroom, and bathroom, all the floors, etc., were replaced. Everything that is shown in the photographs was done. Mr. Lotson stated to answer Mr. Coursey's question, he thinks that in both cases, the fact that building B was a residence was not recognized by the permitting issuing authority. He believes that from the staff's standpoint, they are looking at this as to whether or not the current applicant had a justifiable reason to have taken the actions that he took. From what the staff can tell, he went through the process as a property owner would believe they need to. The things that were done permit wise were not the applicant's responsibility.

**Mr. Vinyard** asked Mr. Lotson if the applicant lives in Building A.

**Mr. Lotson** answered no.

**Mr. Vinyard** asked if Building A is rented.

**Mr. Lotson** answered that no one is living in either building A or B presently.

**Mr. Vinyard** asked what the purpose of Building B is. Is it going to be a rental unit? If so, is this permitted in the Code to have two rental units on a single-family lot?

**Mr. Lotson** explained that there are no provisions that prohibit properties from being rented. But he prefers that the applicant go into his plans for the building.

**Mr. Polote** said he imagines that the applicant went through a lot of respects to repair this building; particularly, the roof and what he has seen in the interior. Although, he went through these expenses, it would also appear that he went through the correct channels in order to get permitted. Therefore, inevitably, it appears that the petitioner could potentially be penalized for someone else's mistake. With him or her being penalized for this and the expense that he went through to renovate this building, seems awfully unfair to the applicant. Mr. Polote told Mr. Lotson that what he understood him to say, is that basically, the Board has been put in a position, in this instance, to further a mistake from the County in allowing an application to occur in both of these instances. But it still does not negate the fact that the petitioner has incurred, he would say, just from him being in the business, a significant cost to renovate this building and bring it back up to par, so to speak, and make it a dwelling. Therefore, he will be definitely interested to understand the nuances with regard to the purpose of A and B buildings for the future. What are the plans for this? He would like to know this before they move forward with this petition. Mr. Polote said the petitioner is between "a rock and a rock" not because of his own accord. Therefore, they need to keep this in mind.

**Mr. Lotson** agreed with what Mr. Polote said as this is somewhat staff's position as well. He said looking at the whole history of the situation, going back to the mid-eighties, is really where the ball sort of got dropped, from a permitting standpoint. Therefore, the question now is really the options as he tried to layout today is that the applicant will be able to seal the property through the County if a variance is granted. If a variance is not granted, then in order to seal the property, he would have to bring building B into compliance. This means that he would have to convert it from a dwelling to an accessory building.

**Mr. Coursey** stated that he believes Ms. Field had a question.

**Ms. Field** asked staff if this property is on City or County sewage or is on septic tank?

**Mr. Lotson** answered to Ms. Field's question, that staff does not know. He suggested that the Board ask the petitioner this question when he comes to make his presentation to the Board. This will be a factor because of having multiple dwelling units on a property this size.

### **PETITIONER COMMENTS**

**Mr. Sawyer** was sworn-in by Mr. Coursey

**Mr. Coursey** explained to Mr. Sawyer that the Board understands that he is the owner of the subject property that is under consideration this morning.

**Mr. Sawyer** answered yes.

**Mr. Coursey** asked Mr. Sawyer to go ahead with and make his comments to the Board.

**Mr. Sawyer** explained that he purchased the property from one of his friends that had gone through some hardships. The friend had some tenants that lived on the property. His friend sold the property to him, he applied for and got all the permits through the proper channels. Mr. Sawyer said he spoke with Mr. Lotson prior to purchasing the property and asked him if it was okay to restore the carriage house as they were not going to be expanding the footprint, but basically restoring what was already here.

**Mr. Sawyer** said he does a lot of restoration around the community. He likes to remove blight from the community. This house in the community sat empty for approximately six years. He wanted to restore this property and he did so. He invested more than \$200,000. in the restoration of the carriage house and the main house. His intention is to sell the property. The previous owner had his mother-in-law living in it when he originally lived here. Then, they moved out and he started renting the property. A tree that was on the property line fell and crushed the structure.

**Mr. Coursey** asked Mr. Sawyer when he purchased the property.

**Mr. Sawyer** said he believes he closed on this property on April 20, 2022.

**Mr. Coursey** said to Mr. Sawyer, "you bought it because of a hardship of your friend."

**Mr. Sawyer** answered "correct."

**Mr. Coursey** asked Mr., Sawyer that to his knowledge, "what was Building B used for previously before it was damaged?"

**Mr. Sawyer** said it was a carriage house, the previous owner's mother-in-law lived in it.

**Mr. Coursey**, said therefore, it was used as a second residence.

**Mr. Sawyer** answered yes. From the photos, you can see that it actually had a gas range in here, too.

**Mr. Coursey** said Mr. Sawyer mentioned a \$200,000 figure in relationship to the main house. Did this include the restoration of Building B or was that a separate amount of money?

**Mr. Sawyer** said the \$200,000 was for the entire property to be restored.

**Mr. Coursey** asked Mr. Sawyer if he could give him some indication of approximately how much he would have spent on Building B.

**Mr. Sawyer** answered that on Building B alone, he spent approximately \$150,000.

**Mr. Coursey** asked Mr. Sawyer that when he bought the property, did he ever have any intention of living on the property?

**Mr. Sawyer** answered, "no sir." As the process was developing, he did consider it, but he was actually in the process of adding onto his house in Southbridge.

**Mr. Coursey** said since he is not a developer or contractor, he wanted to understand the process. He asked Mr. Sawyer if he was a developer or a contractor of some sort.

**Mr. Sawyer** answered that he is not a developer. He has a franchise that is called "Home Investors." They buy houses. He likes to buy and restore houses. This is where he gets his creative ballets from, and he likes to remove blight from the City and County because we have a lot of it in this area.

**Mr. Coursey** explained that his point is, that Mr. Sawyer has obtained permits from the County previously.

**Mr. Sawyer** answered, "yes sir."

**Mr. Coursey** asked Mr. Sawyer to walk him through the process of Chatham County about obtaining a building permit.

**Mr. Sawyer** explained that to obtain a building permit, he gets with his general contractor, and they get with all the sub-contractors that they intend to use for the property. They then go through the process of purchasing the property. They identify what is going to be needed for each property because every property is in a different stage of disrepair. Once they get into the property, they begin the demolition, and this is usually where they apply for the permit.

**Mr. Coursey** asked Mr. Sawyer to focus on this alone. When you want to obtain a permit, where do you go?

**Mr. Sawyer** answered that he goes on Eisenhower Drive. He usually works with Mr. Anderson.

**Mr. Coursey** asked Mr. Sawyer if Mr. Anderson personally grants the permit, or does he have staff that does this?

**Mr. Sawyer** answered that Mr. Anderson has a staff.

**Mr. Coursey** asked that when you file an application, do you tell what your intentions are with respect to the work that you intend to perform?

**Mr. Sawyer** said, "yes sir." It all is laid out clearly.

**Mr. Coursey** asked that in this particular case, did you advise the County that Building B you intended to renovate was intended to be a second residence?

**Mr. Sawyer** said he told them and also provided blueprints with it.

**Mr. Coursey** asked that staff, nevertheless, granted you that permit.

**Mr. Sawyer** said, "yes sir."

**Mr. Coursey** asked if there was any discussion about why they were allowing a second residence to be built on a single-family lot.

**Mr. Sawyer** answered that the question came up if it was a second property, and he instructed Mr. Anderson that on the County's website, when you click the next arrow for the next structure on the property, it shows that there is a dwelling unit and agreed that it was already existing.

**Mr. Coursey** said so you are saying that Mr. Anderson was directly involved in granting this permit.

**Mr. Sawyer** said they had a conversation on two occasions, yes.

**Mr. Vinyard** said, I feel for you. This is a mess that they are in the middle of. Now, it is your intent to sell the property. Right?

**Mr. Sawyer** answered, "yes sir."

**Mr. Vinyard** said, but you can't sell the property without a certificate of occupancy, obviously.

**Mr. Sawyer** answered correct and also because he has very high morals and standards and he would not want to sell this problem to somebody else.

**Mr. Vinyard** said, I congratulate you for fixing this mess up. You certainly invested a whole lot of your money and apparently have gone through the steps as required. You understand our problem?

**Mr. Sawyer** asked, can I intervene one second? He said, "we passed every single inspection on the first visit as well. We passed the mechanical, electrical, plumbing, all phase one and phase two; all both of those; framing, insulation, and pre-drywall." We did not get the red flag until we were just about ready to call for the Certificate of Occupancy. Then they said they had a complaint that this is not within the zoning permission. I fought every single channel and got through this. He said that he asked Mr. Lotson even before he purchased the property if it would be acceptable.

**Mr. Vinyard** said all those people were in part B while the bathroom was going in there; while the kitchen was going in there; and everything else. Okay. Thank you, sir.

**Mr. Coursey** said he would like to follow-up on one question. How long did it take you to renovate this building B?

**Mr. Sawyer** said they got the permit in June; it took about a month and a half to get the permit. They completed it in October, and they have been sitting here on idle ever since. They were trying to get in for the October hearing and November was cancelled. Now, they are in December. He has been holding it finished for three months now.

**Mr. Coursey** said you indicated that throughout this process, there are approvals that need to be made by the County for rough-in construction, plumbing, electrical, etc.

**Mr. Sawyer** said, "yes sir."

**Mr. Coursey** asked if all of these were made.

**Mr. Sawyer** answered that all were made and agreed with.

**Mr. Coursey** asked Mr. Sawyer if no one at any time during the construction of building B, made any indication that this might not be a problem?

**Mr. Sawyer** said, "that's correct!" He said he wanted to answer the question that Ms. Field asked earlier. It is on a private well and it is also on a public septic tank. When they were doing the rehabilitation of the property, they discovered that building B, the carriage house as he refers to it, was actually tied to the community well; and they disconnected it from that because they could not figure out why it was not turning off. Therefore, they disconnected it from the community well, where it was getting free water for all these years. He said they made a lot of corrections to this property.

**Mr. Coursey** said he agreed.

**Ms. Field** said in addition to that, she guesses her question is, the septic system for that property, because that area is highly regulated for septic systems and leach fields, and when you were permitting was anything ever brought up about the Health Department Environmental, as far as sustaining two residences on one single system?

**Mr. Sawyer** answered that from what he understood from the previous owner, it was originally built with the main house in mind to be put there. The septic tank was up to Code for all those structures when it was originally put in.

**Mr. Coursey** said maybe he missed something. There is one septic system for two residences here. Okay, alright.

**Mr. Coursey** asked Mr. Polote if he had any questions.

**Mr. Polote** answered no.

**Mr. Sawyer** asked, how do you like the "before" and "after?"

**Mr. Coursey** answered, "very nice."

**Mr. Sawyer** said they take a lot of pride, and they use a lot of local contractors to do all of their work.

**Ms. Field** asked who was the G.C. (General Contractor).

**Mr. Sawyer** answered, Chuck Tippins with Tippins Home. He builds primarily one half million dollars houses in Effingham, Southbridge, and primarily Savannah Quarters.

**Ms. Field** asked if he has built in this area before.

**Mr. Sawyer** answered, "no he has not."

**Mr. Coursey** asked Mr. Drayton if he had any questions.

**Mr. Drayton** asked if there are any other second dwellings in this area.

**Mr. Sawyer** answered as a matter of fact, there are three within 250 feet of this property. He asked if he could show the board the other three properties. One is an adjacent property; one is directly across the street; and one is about 250 feet away and it actually has four dwelling units on it. He said he pulled all this information directly from SAGIS. He showed the Board the three dwellings. The addresses are 256 Shipyard, 459 Shipyard (which is directly next door); and 253 Shipyard, which has four.

**Mr. Coursey** told Mr. Sawyer that he assumes the adjacent properties that he is showing are also one.

**Mr. Sawyer** answered they are.

**Mr. Coursey** asked staff if they had a response to this.

**Mr. Lotson** stated that he believes the only thing they can add to this part of the discussion is that

throughout Chatham County, there are examples of structures that have been converted to dwellings. Some of which have been done through a permit process and some have not been done through the permitting process; especially in some of the older parts of the County, a lot of the island areas. It is not uncommon where you have large lots that at some point, a building becomes a dwelling unit. This is really an enforcement issue; it is difficult to know what's happening inside a building such as he was describing with building B, whether or not it is actually a dwelling, unless you actually, physically go inside the building.

**Mr. Coursey** said, therefore, Mr. Lotson's point is they do not know whether these other lots were properly permitted or whether permits were sought at all.

**Mr. Lotson** answered, "correct."

**Mr. Coursey** asked, "who is in charge of the enforcement."

**Mr. Lotson** answered, "the Building Safety and Regulatory Services Office" is in charge of enforcements as it relates to the Zoning Ordinances. However, he wanted to say again that most of that is, and it really has to be complaint driven, because they are not going around inspecting individual properties for what is happening inside the four walls.

**Mr. Coursey** asked Mr. Sawyer if he wanted to present anything else.

**Mr. Sawyer** answered "no" and thanked the Board for their time.

**Mr. Coursey** asked Mr. Sawyer to have a seat. The Board may want to hear from him again.

#### **PUBLIC COMMENTS**

**Mr. Coursey** said he understood that there are people in the audience pertaining to this petition. He knows that they have one written opposition. He asked that individual to come forward.

**Attorney Craig Call** came forward and stated that he was representing Mr. & Mrs. Blackston, who live immediately adjacent to the property.

**Mr. Coursey** told Attorney Call that he had the floor.

**Attorney Call** stated that a lot is here to unpack. He said he honestly did not know where to begin, but a couple of things he heard, and he wanted to touch upon. Mr. Lotson mentioned that he does not recall bringing a petition like this before the Board. It is because it is flatly not allowed, you can't do it. The Ordinance is perfectly clear that you cannot have two residential dwelling structures in an R-1 zone. There was a lot of discussion about expense and time. He said respectfully, expense is not a factor in a variance. This is why you seek the variance before you do the work. It is not the adjacent neighbors' fault that the proper research was not done on the property before they started working. He believes that Ms. Field had a very telling question. The general contractor who does work in Chatham County should have very well known that this was completely improper. It is not allowed, and he did it anyway. He said that he did not say anything to Mr. Sawyer. Now, to be clear, he does not know Mr. Sawyer and does not have any personal ill-will against him or anything like that. He said he is sure the residents and everybody is glad that the structure was cleaned up because it sat that way for a period of time.

**Attorney Call** said that there has been a lot of discussion about the proper channels being followed and permits granted. He said he knew that in Chairman Coursey's experiences as a city attorney, the same as his, that there is a term called "ultra vires" which means that a local government or an agency, did something that they did not have the authority to do. They did it without the right and without the power to do it. This means that nothing was actually granted. This means that those permits are invalid because they were not allowed to be issued in the first place. The well-established Georgia case law that says nothing thus with an ultra vires act. He is not granted anything. You cannot turn around and sue government for doing something that they should not have done in the first place.

**Attorney Call** said he wanted to touch upon the staff's report briefly. The variance standards, the very first one identifies extraordinary and exceptional conditions that should be found before a variance is

extracted.

**Mr. Coursey** asked Attorney Call to cite the section where what he is saying is found. Do you have it before you?

**Attorney Call** said it is the staff's report -- the variance standards in the staff's report, which he believes is under the County's Ordinances 10.6.

**Mr. Coursey** said he has the section. It is 10-6.2.

**Attorney Call** said in his opinion, there is no finding of any sort of condition, either extraordinary or exceptional. The only thing that is listed is that the shape of the property is somewhat peculiar. The second standard, which is the unnecessary hardship is kind of what they just talked about. Yes, he spent money, and yes, he was granted permits, but because the government did something wrong, does not give him anything. There is no hardship to be found there. And to mention about the other properties in the area, he believes the residents will speak on this; those other additional properties were not to their knowledge have never been permitted. People just built them, but that does not mean that it is allowed. The finding that an additional residential structure on a property as opposed to an accessory building won't create more impact, he does not understand that. If you have two families on one property as opposed to one family with a garage, is going to be a much different impact. Particularly with traffic, you will have more cars coming in and out of there. You will have two families trying to store all their stuff on the same property. The impact is obviously going to be greater.

**Attorney Call** said he wanted to point out that it says the reason for application, variance is checked and the first word right under that is "rezone." There is a big difference between "rezoning and variance." There are things known as "use variances and design variances," which is what most of them are familiar with. Design variances such as setbacks, building heights, and things of that nature. Zoning laws are generally governed by what is called row of exclusion. If it is not mentioned, then it is not permitted. Chatham County Ordinances do not mention or permit use variances. He said he had some documents he wanted to handout. It is an excerpt from the Chatham County Ordinance discussing variances. It tells you the reason you can grant a variance. Then it says specifically, provided, however, that "variances shall not be granted to permit use of land or building a structure that is prohibited by the Ordinance in the district in question." Undeniable, that the Ordinance prohibits two dwelling structures on a single-family lot. On the second page, in addition to that limitation, the last sentence of Section 3-3," the single-family residential lots shall be limited to one electrical meter. " This next page shows you the two electrical meters. There is one on building B and one is on building A. It is a legal impossibility with a variance to be granted. Chatham County Ordinances expressly prohibit this. It plainly says that you may not grant the variance if it is prohibited by the Ordinance.

**Attorney Call** said he does not usually get this lucky. He is a lawyer and is used to losing. It is in black and white that it cannot be granted. He said he also wanted to handout a letter of 1996 where the Chatham County Inspections Department notified the prior owner that you cannot have two residences on this lot. Chatham County knew about this. It is in black and white again that Chatham County knew that this was not conforming. He said he knew that Mr. Coursey is very familiar that there are noncompliance properties in every jurisdiction, probably in the State of Georgia. But this does not make it okay just because they have existed there for a long time. Sometimes a variance is the right way to bring it into compliance; but sometimes it is not. In this situation, it is their opinion that this is not the right method, and it is not allowed; it is not permitted.

**Attorney Call** said this is what he had to share with the Board. He entertained questions from the Board. He said he knew that residents are here. Mr. & Mrs. Blackstone are here. At least there is one other resident that would like to speak.

**Mr. Coursey** said for the record, before Attorney Call step down, he has marked the first exhibit that he has given to him - **Section 10-6-3 Request for a Variance as Blackston Exhibit "A"** and the second exhibit **Chatham County Inspection Department 1996 Letter - Blackson Exhibit B**. These will be introduced in the record.

**Attorney Call** thanked Mr. Coursey.



**Mr. Coursey** asked the Board if they had questions for Attorney Call.

**Mr. Vinyard** said as he understands this letter and as he understands the sequence of events here, B was built before A. Is this correct Mr. Lotson?

**Mr. Lotson** answered that's correct.

**Mr. Vinyard** said that B is actually the principal residence on this lot, not A. Is this not true? You could not have built as A was not allowed to be built if B was being used as a residence; and this is your argument. Is it not?

**Attorney Call** said in general, yes.

**Mr. Vinyard** said that is not in general. That's what the law is. You stated it. You could not build A if you already built B. Building B was there first, permitted and being used as a residence before A was ever built.

**Attorney Call** said "okay." I don't disagree with that timeline, but my argument is you can't use a variance to get around a zoning requirement, a use zoning requirement.

**Mr. Vinyard** said whatever we do here, you are going to have to rip the kitchen out of B, which is actually permitted legally because it was the first residence. Or you are going to have to tear down A. Now, this looks to me that this is where we are, here. Because A is actually the nonconforming use. "A" was never supposed to be built because "B" had the right permit. Building B was the single-family lot. So, it had a single-family residence on it and then somebody built A. Now, this is the timeline as I see it.

**Attorney Call** said his only comment to that would be, there was a point in time at which building B was damaged to the point where it could not be inhabited and building A then arguably became the primary residence,

**Mr. Vinyard** said he believes B was built first, A was built second, but A was built before B was damaged. Okay?

**Attorney Call** said if he could respond to that, what essentially you have when both of those buildings were there is what is called a nonconforming use. In pretty much every set of Ordinances, and probably in the State of Georgia and around the country, nonconforming uses are not permitted to be expanded or rebuilt. And if at any time a nonconforming use goes out of use, which building B would have when it was damaged and that lasted for six months or longer, you no longer have a right to that nonconforming use. In addition, the application clearly references the second dwelling unit that is preexisting; and the application is seeking a variance for the lot, not for the building, itself.

**Mr. Coursey** said this is a mess, shall we say!

**Attorney Call** said I agree. I would not want to be in either position to be honest with you.

**Mr. Coursey** asked Attorney Call if he had any witnesses.

**Ms. Field** said you may not know, but she was curious. She asked that when the damage was done to this structure, was it ever 50% meaning that it applies that everything has to be brought back up to Code now? There are no exceptions after so much damage and so many renovations to any home it is required. Do you know if this came into play with that?

**Attorney Call** answered that he did not know personally, but looking at the photo as Mr. Sawyer said, this was a complete rebuild. There was no saving the structure. He said his guess would be that it was clearly more than 50% damage. He was not involved in the restoration, but just looking at the photo, it appears to be.

**Ms. Field** told Attorney Call that she understood. She said on the grounds of trying to verify beyond the fact that it is not allowed for this particular lot is everything built to Code because she sought questions about that being on a septic system or a shared septic system with another structure.

**Attorney Call** said that he could not speak to that. But it is pretty clear that there are two electrical meters on the property; and Ordinance says that you can't do it.

**Ms. Field** said obviously there are separate utilities completely for that structure.

**Attorney Call** said that's correct.

**Ms. Field** said "thank you."

**Mr. Coursey** asked if anyone else wanted to speak. He asked Mr. Blackston to please come forward.

**Mr. Ben Blackston, Jr. and Mrs. Tina Blackston** came forward. Mr. Blackston stated that their mailing address is 249B Shipyard Road. Mr. & Mrs. Blackston were sworn in by Mr. Coursey.

**Mr. Coursey** asked that only one person speak at a time.

**Mr. Blackston** said that Mr. Coursey is right. This is a big mess! It has been a big mess since day one. He and his wife built their house in 1983. Before they built this home, they lived across the road and operated Harrison Fishing Camp on Shipyard Road for approximately seven years. The construction of house B started during their construction. The person that bought the lot and started the construction lived across the road next to the fishing camp. His mother and father were the people that Mr. Sawyer brought up that built the house in the backyard. They built the garage apartment and rented it. His uncle did the same thing. He is one of them, too. They built those places without a permit. They just built them and started renting them. He was running the fishing camp next door and saw all of this happening. When they bought their lot and started building their house, the owner started the small house and he got a permit on the small house, not for a primary residence, it was permitted for a storage building. He said he had a letter and believed that the Board had a copy also. Mr. Blackston said he went to him and told him [he knows this person; he grew up with him] that he and his wife did not want rental property in their backyard. The house is eight feet from the property line and is in their backyard. The kitchen, the bathroom, dining room, and all the windows are right in their backyard. However, he was told that there would not be any windows on the house, but this was not true. He built the first house and then he started on the two-story main house.

**Mr. Blackston** said he went to the Inspections Department complaining, trying to file a complaint. How did he get a permit to build two residences on one R-1 lot, he does not know. He cannot answer this question. He said he has been to Mr. Anderson's office dozens of times. He said he had Mrs. Helen Stone involved in this. Mrs. Stone stopped it from being a rental property. Originally, he sold the property from the people that Mr. Sawyer brought it from. He applied for a medical hardship for his mother. They met with the Chatham County Board of Commissioners. They went against the Chatham County Ordinances. The County Ordinances stated that you can have a medical hardship, but it has to be on a temporary basis. Such as a mobile home can be brought in for a medical hardship and after the medical hardship, the mobile home has to be removed. They went ahead and approved the medical hardship for house B while his mother was alive.

**Mr. Blackston** said that all through the years, they have been able to stop it from being rented for rental property because they want their privacy. They do not want rental property eight feet from the fence in their backyard. When Mr. Sawyer bought the property and he saw him over there, he went up to him and introduced himself. I asked him what his intentions were for this small house. Mr. Sawyer told him that they were going to renovate it and turn it back into a residence. He said he told him upfront that he and his wife do not want rental property next to them and they will fight it. He went to Mr. Anderson again, but he brushes him off. He never wanted to try to help him. He does not understand why. This is plain and simple; it is all one lot; it is one house per lot. And for some reason, they have two houses on one lot with two electric meters, two gas meters, and he could not tell them why it was approved. But they have been fighting this since 1983 and they are still going to fight it. This is wrong; it is not right.

**Mr. Coursey** asked the Board if they had questions for Mr. Blackston.

**Mrs. Blackston** said she seconded what Mr. Blackston stated. Everything that he told the Board is exactly the truth and they have every documentation, every letter and every communication that they

have had with the building permits. She said she feels bad for this young man because, in her opinion, the man he bought this from did not tell him their history.

**Mr. Coursey** asked Ms. Blackson if she had copies with her today of the documents that she has.

**Ms. Blackston** asked Mr. Coursey if he was saying of everything.

**Mr. Coursey** answered, yes.

**Ms. Blackston** said no.

**Mr. Coursey** said he would love for those documents to be entered into the records officially. If they could find a way to do this. He asked Attorney Call if he could get the copies done today.

**Attorney Call** answered yes. If it is acceptable to the Board, he will ensure that they are scanned and emailed to Mr. Lotson.

**Mr. Coursey** informed Attorney Call that the Board members need to receive a copy. Shall we mark those **Blackson Aggregate Exhibit C**.

**Attorney Call** said he would do so. He will get with Mr. Lotson and ensure that he has everyone's email and send it to them.

**Mr. Erich Tolksdorf** came forward and stated that he lives at 7 Shipyard Lane. He was sworn in by Mr. Coursey.

**Mr. Tolksdorf** said his property is directly across the street from the property in question and he is very much opposed to this. He said he had letters with him from his neighbors who are opposing this, but he did not have copies for everyone. Mr. Tolksdorf said that 5 Shipyard Lane is the property directly beside him and it belongs to Bill DeLoach and his wife. They are opposed to this multi-family residential property or having more than one residence on a single-family lot. He said he has a letter from Charles [Chuck] Moore at 10 Shipyard Lane; he is adjacent to him, and he is his direct neighbor. He is very much opposed to this also. Mr. Moore in fact applied for and was denied a request to put a second dwelling on his property, so his handicapped daughter could live in it. He was denied that application. Mr. Moore was required to survey the property and execute a separate septic tank for his property. So, in fact what is happening here is this property in question, is trying to get for free while Chuck Moore had to go through an extremely, expensive process to get a residence for his daughter on his own property. He complied with it; the building is now under construction.

**Mr. Tolksdorf** stated that Clyde Sturgess is adjacent to Chuck Moore and if you look at the map, you can call him his neighbor, but Clyde lives next door to him. He is also opposed to this; therefore, four residents besides him are opposed to this. Mr. Blackston is also opposed to this. The letter that was sent out to everybody and the request for a variance are not really the same. One is asking for a multifamily variance, which he guesses is an R-2 or an R-3. He said granting an R-2 or R-3 in this area, they are going to destroy this neighborhood. Mr. Tolksdorf said he does not know how to put it. They are going to make an R-2 out of a half-acre lot, .49 acres. You do not have enough acreage there for two primary dwellings. He believes that the MPC code requires somewhere between 25 and 30 thousand square feet per single-family lot to get a residence on it. Now, they will have two. You simply do not have enough real estate there to put two lots on it, per your Ordinance. The next thing is this building is eight feet from the property line. This is a dwelling -- eight feet from a property line. Mr. Tolksdorf said he believes that the Ordinance requires this to be 20 to 23 feet away. He said he was quite sure that they are not going to just pick up this building and move an additional 15 feet away. There is not enough room on this property. Next is parking. What are they doing with this property? Right now, parking is not an issue. The place is not rented. Obviously, the owner, GOGO Developments, not a private person, this is an investment corporation applying for the variance. It is clear on the application. They are looking for that variance, a corporation. As he has said, what are they doing with parking? Right now, there is a driveway on the front of building that is meant for the house, building A as it has been referred to. There is no parking for building B. Now, if someone is going to tell him that they are going to use a part of the driveway for building B, that is not going to happen. In real life, that driveway is designed to be used for building A. Now, where will Building B Park if this is a residence? Over to the right-hand side, a septic

tank is there. So, they are going to park in the yard on top of a septic tank so people can get to Building B? Or are they going to drive around into the backyard? Either case, and although the nice pictures they see here, he has not seen a plot plan of how they are going to this and how they are going to do the parking. Nothing is there, they have to get a variance by somebody for an additional curb cut to bring in a driveway. To put two lots on one lot under R-2, you are required to make sure that cars do not back onto the road. You have to turn the cars around and drive onto the road. Now, when they get that much parking on the lot, the 60 percent rule comes into play. They are now going to have more than 60 percent of the hardscape out there. What will this look like from the street? Right, now, it looks good because they do not have two families living there. For the ten years that he has been living here, nobody has lived in that back part of the building because, well, it is uninhabitable.

**Mr. Tolksdorf** strongly encouraged that the Board does not allow this. The best solution, well for Mr. Blackson and other people, is simply to demolish this building and remove it from the site. It is in noncompliance in so many ways. It is wrong! Now, if they are saying that Building B is the compliant building and building A is noncompliant, then that's your viewpoint. Someone has put a second meter on this lot without asking for a variance or a compliance. It says, "you shall not have a second meter." This has been done illegally. That meter is brand new and has been put up illegally recently, through the renovation process. The question came up [and he apologizes for his outburst], but more than 50 percent of the value of the building my own admission, they have spent \$150,000 on that small building. So, somebody is trying to tell him that the little building is worth more than \$300,000. Of course, more than 50 percent of the work is done. The roof was structurally damaged and had to be rebuilt. It was completely striped, sheeted, new rafters, joist, the back wall was put together; and the building is not wide enough for interior supporting walls. But this was done. What is clear here is that the owner, GOGO Development, did not hire a design professional to look at this. At that point of the 50 percent on that small secondary building, the outbuilding, a design professional would have looked at this and said they had Code compliance issues along with building A part. While this was all interior, the total value [he is not too sure where this is], but the electric meter has to be removed. This includes the rough-in, the weather head, and all the associated wiring with the second electrical meter. This has to be removed. Not removing this, there is an encouragement there for future owners or current owners to make this into a residential or into a rental facility illegally. Then, they would now have a policing problem. As they know, Chatham County does not have enough staff to go out and police everything and do all that. It is an encouragement if that meter is left in place. **Mr. Tolksdorf** said he was encouraging the Board to make this and keep it a single-family lot, a single-family dwelling. Bring this building into compliance to make it a single-family dwelling.

**Mr. Coursey** said he noticed **Mr. Tolksdorf's** signature on one of the letters; he asked him that before he leaves to please spell his last name. It is a little unusual.

**Mr. Tolksdorf** stated that his first name is a little unusual, too. It is spelled **E-R-I-C-H** and the last name is **T-O-L-K-S-D-O-R-F**

**Mr. Coursey** asked **Mr. Tolksdorf** if he had anything else to say.

**Mr. Tolksdorf** answered no.

**Mr. Coursey** entertained questions from the Board. The Board had no questions.

**Mr. Coursey** asked if anyone in the audience or online wanted to speak on this petition.

**Mr. Coursey** said since no one came forward, he invited **Mr. Sawyer** to come forward with his response to the public comments.

**Mr. Sawyer** explained that the majority of the structure was not rebuilt. It was a section of the roof that was about 12 feet x 20 feet that was rebuilt. They spent the majority of the money in the process of demolishing the property and removing the mold, doing the remediation, replacing the floor in the kitchen. The kitchen alone cost about \$40,000. It is a solid wood kitchen. soft closed; course or quartz countertops; stainless steel appliances, and tiled backsplash. They had to do the separate electric meter. Originally, they planned on doing a panel from the main house to the carriage house. But unfortunately, they were unable to do that because the County required that it have its own separate meter; and so, did Georgia Power. Therefore, they had to do this to bring the structure back into code.

**Mr. Sawyer** said they have definitely had a hardship with this property. He explained that from Mr. Blackston's property looking at this property, there are a grove of trees and a shed. Therefore, they cannot look into the back of this property. If it would make him happy, he would be willing to build a fence there so that he will have his privacy. Mr. Sawyer told Mr. Blackston that he had no problem doing this. He said he has been completely honest with Mr. Blackston and has been upfront with him since the entire time of this process. If Mr. Blackston had such issues with the property being rebuilt, he is sure that Mr. Ward would have sold him the property as well. He came to him and asked him to buy it.

**Mr. Sawyer** stated that he has no intentions of renting the property. He wants to sell it. He would love for someone to buy it who has a need for it, such as a son or daughter that is in college, or maybe an ailing grandmother or grandfather to buy it and live on the property. This is all he really has. He has spent a lot of time, energy, e, and money on this property. He has restored the community with bringing this property up to code and up to complete code as approved by the County and required by the County. Mr. Sawyer said he does not know what else he can do to make the community happy about it. But he is sorry that they are very upset that he restored this structure.

**Mr. Coursey** asked Mr. Lotson, referring to the original permit that was issued for building B, is there any reason in staff's mind that you can relate that the permit was appropriate in any way and in accord with Chatham County regulations?

**Mr. Lotson** asked Mr. Coursey if he was referring to the original permit for the construction or for Mr. Sawyer's permit?

**Mr. Coursey** said, "Mr. Sawyer's permit."

**Mr. Lotson**, for clarity, asked Mr. Coursey if he was asking whether or not staff has an opinion as to the validity of that permit?

**Mr. Coursey** answered, "yes."

**Mr. Lotson** answered, "well, I think Mr. Chairman, as clearly there are a number of outstanding issues with the issuance of the permit." I think that going back to the beginning, there were issues with the permitting issuances. At some point doing the process of Mr. Sawyer's permit had the County found that the second dwelling unit was an issue, I think that should have been addressed on the front end, not after the work was essentially completed and the inspections had taken place. Yes, I think there is an issue with that. From our standpoint, we have somewhat moved beyond that in terms of where they are now with the work that has been completed. And I think there is something to be said for the fact that what they looked at with this is essentially a renovation of what was already there. If this had been a new construction, I think none of this would have ever happened. The County would have never issued a permit for it. They would have told any applicant you can't build a second house if it had been a vacant lot, and somebody came with a request to build two residences, they would have said no! I think there has been some confusion because this property existed before. This probably extends to the issue about meters. I think that when you start replacing things, and there are some gray areas as to what should be allowed versus when you build new, everybody is looking at the Codes and Ordinances. As a new construction, it is a little easier on staff at that point to say yes or no. When you are replacing something that existed already, he believes there is more of a gray area.

**Mr. Coursey** said his second question is, in the process from the beginning of the permit to the consideration of granting a certificate of occupancy, what department grants a certificate of occupancy? Is it the same as the one that grants the original permits?

**Mr. Lotson** answered, "yes, it is."

**Mr. Coursey** said he had no further questions. He asked the Board if they had any questions. The Board did not have questions. Mr. Sawyer raised his hand. Mr. Coursey asked him if he wanted to make another comment.

**Mr. Sawyer** said he just remembered that Building B also originally had a separate electrical meter. They basically replaced what was already there, although, he wanted to do a panel. It had its own preexisting

electrical box and meter.

**Mr. Vinyard** said he assumed that every single person who made an inspection on this property had to walk past Building A.

**Mr. Sawyer** answered, "yes, sir. You could not miss the behemoth in the room.

**Mr. Vinyard** said okay, thank you.

### **BOARD DISCUSSION**

**Mr. Coursey** said he was not speaking for the Board but speaking for himself. Because of the facts of this situation, this Board has been put in an untenable situation. Mr. Sawyer buys a property, seemingly does everything by the book; goes to Building and Safety obtains his permit, and then spends his hard-earned money acting in reliance of that permit. Then he goes at the end of the day after all of his periodically inspections have been completed, presumably positively, he goes to the same department and asks for a certificate of occupancy [CO] and is then denied. Mr. Call was correct in his assessment of Georgia law and for the members of the Board who are not attorneys, if I may just generally paraphrase what the law in Georgia is when it comes to obtaining permits. Once a permit is issued to a homeowner, it vests that owner with certain Constitutional rights, that property is his and he has a right to do with it what he wants to do with it, provided it is in accordance with applicable law, which in this case is the County's Ordinances. One major exception is, if that permit is issued in Mr. Call's words in an "ultra vires" manner.; meaning outside the constraints of law. Mr. Coursey said, he for one, has a hard time understanding how this occurred and he has been desperately looking for some crease to try to step into, but he has not found one.

**Mr. Coursey** said what staff is asking them to do here is to be solvent. How do I split this baby? What are they supposed to do? The petitioner seemingly has done everything right and the County has done right up until the CO, done anything wrong. When the permit was issued, he had a vested right. But they, have to determine whether or not that permit was issued illegally or improperly or not. This man is being harmed by a lot of money that he spent on this property. He said he is still not clear how the permit was issued in the first case as they do not have any evidence from the County on this point. They also do not have any evidence of what oversight there was or wasn't to allow this permit in the first instance. Was it intentionally or was it negligent? He does not know, and he cannot make that call. But what he is being asked to do with his vote is to ignore what he terms and believes to be clear long is thou shall not build a second residence on a single-family lot. Mr. Coursey said in having been a 40-year practitioner and he has other lawyers on the Board, and he is sworn to uphold the law, so he has to say at this point that his vote is to deny the variance. Now, he is subject to be persuaded otherwise by any member of the Board.

**Mr. Vinyard** said he has ten years on the Chairman. He has been at the Bar for 50 years. And he has sat on, not this Board, which he has only been on this Board for a couple of years, but he was on the Zoning Board of Appeals for the County [he moved from] for almost 20 years. He has also served as County Attorney and Attorney for the Board of Sewer and Water. So, he knows the drill. Mr. Vinyard said he thinks as he understands the timeline here, building B was built first for whatever reason. At some point, then after, and they really don't know the timeline for that how many years, building A was constructed and actually lived in. At some point, thereafter, building B was turned into a residence because it was used as a "mother-in-law suite" basically. So, it had a kitchen, had a bathroom, had a closet, a bedroom, and all these things that other residences have. Then, thereafter, we had the storm, and the storm wrecks building B, which was probably the only correctly permitted residence or building on the lot.

**Mr. Vinyard** said this gentleman, through no fault of his own, buys this piece of work, this problem, and invests not a little bit of money on both A and B. Now, if he lived back there, he would be just as concerned as these residents are. And he does not at all, minimize their concerns. He lives in a gated community, and thou shall not put another secondary residence on there by hell or high water, except they would have to go through the Homeowner's Association, which would never allow it. This apparently does not have that safety net. He was concerned that actually the petitioner, the applicant, was going to use this as rental property, that is rent building A and then rent building B, but that's not what he is going to do. Mr. Vinyard said he, like Mr. Coursey, sworn an oath of allegiance to the Constitution of the

Commonwealth of Virginia and the laws thereof, and the Federal Bar to the Constitution of the United States and the Laws thereof. He takes his oaths extremely serious in terms of applying the law. But every once in a while, the facts, as he did when he was a prosecutor, outweigh the law. You know the law looks like the person is guilty and probably is, but when the facts come out at the trial, somehow the jury or the judge determines otherwise. He said he has been through hundreds, if not thousands, of these types of things. This is a very difficult situation. He said he is normally prone to follow the rules as they are. But they grant exceptions left and right. He does not like the idea of doing it; he is a firm believer that exceptions create a precedent, which is difficult to deal with in the future because once you grant one exception, you have to grant as in the past one they just had; they wind up doing the same thing because the person here says, "well you just granted three right down the road." He said he really does not know what to do. It is a very difficult situation for him to be put in. Thank you.

**Mr. Coursey** asked the other Board members if they wanted to say anything. They did not. He asked Mr. Lotson if he wanted to make any comments.

**Mr. Lotson** said he just wanted to circle back a little bit for the record since the Board is in their discussion about what the petitioner is requesting so that everybody is familiar with that. Mr. Lotson explained that the Ordinance section that they referred to, Section 3-3, which essentially says in part that "there shall be no more than one principal building or use upon a lot." So, in this case, they showed that the two buildings that are on this lot are both principal buildings by definition because of the fact that they have a living area, kitchen, and a restroom. With that being said, he would also add that he thinks there is some nuance in the fact that at the point in which building B became a resident, then that section was violated. He explained that when two principal buildings started existing on this lot. Therefore, he guesses that what he will suggest to this Board is that he thinks what they are determining today is, "does your action today do anything about that?" Mr. Lotson said this building exists and has existed as a residence prior to the damage and the repairs that Mr. Sawyer did. So, even if Mr. Sawyer is denied, he has two sources as Mr. Vinyard pointed out to address the issue. One will be to decommission probably building B or for the building not to be used. The building will be here regardless. Therefore, those are his choices based on what the Board rules today, if there is a final ruling today.

**Mr. Lotson** said he would also just for the record, put out that the Board has the option to continue the hearing if there is other evidence that they feel needs to be provided. Mr. Sawyer has the right to request that of the Board. Mr. Lotson said he just wanted to put all of this out there since they were done with the discussion and were going toward a motion.

**Mr. Coursey** stated that he had not heard such a request from the Board at this point. There will be some additional evidence presented by Mr. Blackston and the other gentleman, which will come in after the fact that they have not had the opportunity to review yet. Now, does anyone consider that to be a problem in calling this to a vote today?

**Mr. Vinyard** said he was not at all sure that what is to be presented is going to change the facts or the law. Actually, the law is the law, and the facts they have heard; he believes a full and complete statement of what has happened here. He said he really does believe in the bottom of his heart that this situation bobbed through absolutely no fault of the applicant.

**Mr. Coursey** said, I agree.

**Mr. Vinyard** said, and therefore, so that they will have something on the table, he moved that this Board grant the variance as requested by the applicant and as recommended by staff.

**Mr. Coursey** said Mr. Polote seconded the motion.

#### **Motion**

The Chatham County Zoning Board of Appeals does hereby approve the petitioner's request for a variance to Section 3-3 of the Chatham County Zoning Ordinance to allow a second residential dwelling based on the variance criteria at 431 Shipyard Road. The decision is limited to the development plan submitted by the Chatham County Zoning Board of Appeals

Mr. Coursey said let's have a roll call vote on that motion. Mr. Vinyard voted I; Mr. Polote voted I; Ms. Field voted Nay; Mr. Drayton voted I; Mr. Coursey voted Nay Mr. Coursey stated that the motion passed. Ms. Ross and Ms. Stone were absent.

Discussion After the Motion: Mr. Coursey explained that for the record, the Chairman assumed that there is an audio recording of today's meeting. Can we make a verbatim transcript of these proceedings this morning? He said he has a feeling that this is going to the Superior Court, and he would prefer that they have a full and complete record to present to that Court. Can I request that? Mr. Lotson answered, yes sir and said for the record, anyone present or listening, as the Chairman mentioned at the beginning of the meeting, the Zoning Board of Appeals is a quasi-judicial body. Appeals to that body are made to Superior Court. These appeals have to be filed within 30 days of the decision made here today. Mr. Coursey called on Mr. Call to speak as he had his hand raised. Attorney Call stated that he just wanted once again to clarify for the record that they will be allowed to supplement their exhibits with the letters they referred to earlier. Mr. Coursey answered yes, to complete the record, documentary evidence will be presented and entered into the record. Attorney Call said, "thank you.". Mr. Coursey stated that procedurally that appeal is made in what manner? Mr. Lotson said at the Courthouse. Mr. Coursey said okay it is made directly to the court. You do not have to file anything with the MPC? Mr. Lotson answered no. Mr. Vinyard thanked everyone who appeared today. He thanked Attorney Call and his clients. This is a very difficult situation that the Board has been put in, but at least they did this like gentlemen and ladies that they are, and handled this situation as best they can. Sometimes they do it right and sometimes they do it wrong. Thank God there is a procedure to tell them whether they did it right or wrong. He said, "sir, that's your option". He has done this in many, many cases. He thought he was right or wrong and did exactly the same. But he just wanted to add that it is so wonderful in this country that they can get together and dissolve issues without acting badly towards each other. So, thank you all. Merry Christmas!!

### **Vote Results ( Approved )**

Motion: Robert Vinyard

Second: Benjamin Polote, Jr.

James Coursey	- Nay
Meredith Stone	- Not Present
Robert Vinyard	- Aye
Benjamin Polote, Jr.	- Aye
Kewaan Drayton	- Aye
Ashley Field	- Nay

## **X. Other Business**

### [7. 2023 Nomination of Officers](#)

**Mr. Lotson** explained because the Board did not have a meeting last month, they have the option to postpone that nomination if they choose to because they do not have a full Board today. Or, the Board can make nominations today and vote in January.

**Mr. Coursey** said he prefers that they wait until they have a full Board. Can we table this issue to the next month?

**Mr. Lotson** answered, yes.



## XI. Adjournment

### 8. Adjourned

There being no further business to come before the Board, Mr. Coursey adjourned the meeting at approximately 12:15 p.m.

Respectfully Submitted,

Marcus Lotson  
Development Services Director

ML:mem

***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.***