

MINUTES

**City of Milton Board of Zoning Appeals
Regular Meeting
January 15, 2008 7:00 PM**

All Board Members Were Present: Heidi Sowder
Gary Willis
Scott Kilgore
Marcia Parsons
Todd Chernik
Walt Rekuc
Sandy Jones

Meeting Leader/City Staff: Angela Rambeau, Community Development
Mike Tuller, Community Development
Mark Law, City Arborist

AGENDA ITEMS

1. Call to order
2. Election of Chair
3. Approval of December BZA meeting minutes
4. V07-021, Blue Valley
5. Other business
6. Adjournment

PLEDGE OF ALLEGIANCE

MEETING CALLED TO ORDER

Staff, Angela Rambeau, called the meeting to order.

STAFF ANGELA RAMBEAU:

Read purpose and charge of the Board of Zoning Appeals, and then called the first Agenda Item, Election of a Chair and Vice Chair.

STAFF ANGELA RAMBEAU:

The next order of business is the election of a new Board Chairman. At this point we can take nominations for the Chairman.

TODD CHERNIK:

I nominate Heidi Sowder Chair as Chairperson.

SANDY JONES:

Seconded the nomination for Heidi Sowder.

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WALT REKUC:

I nominate myself.

Seconded by Marcia Parsons.

STAFF ANGELA RAMBEAU:

Is there any discussion by the Board?

WALT REKUC:

Since I am the challenger, I will go ahead. As I said to a couple of folks, I think Heidi has done a great job and have nothing against what Heidi has done at all. I would not be displeased whether you win or not, but at the same time, I feel that I have a lot of experience and a lot of knowledge involving this and think it would help in some of these meetings, so that is why I have nominated myself for Chair and do not think I would discriminate or hold back anything from anybody speaking, but I do think sometimes that having the knowledge and being able to have the meeting move a little bit further along may help us get the meetings over a little bit quicker. Thank you.

HEIDI SOWDER:

I would just appreciate the support in continuing on as the Chair and I know that I am not an engineer, nor do I work fulltime in the development sector, however, I have been involved numerous rezoning cases, etc. over the past 8 years that I have lived here in the City of Milton and feel that I have gathered quite a bit of knowledge during that time and have enjoyed it. I would like to continue and appreciate everyone's support. Thank you.

STAFF ANGELA RAMBEAU:

Asked if anyone else had anything to add. Okay, if there is nothing else, I will close the nominations and take a vote.

STAFF ANGELA RAMBEAU:

The first vote will be for Walter Rekuc as board Chair.

VOTE: 2-5 Gary Willis and Walt Rekuc voting for Walt Rekuc

Heidi Sowder, Sandy Jones, Scott Kilgore, Marcia Parsons
and Todd Chernik voting against Walt Rekuc.

5-2 Heidi Sowder, Scott Kilgore, Marcia Parsons, Todd Chernik and
Sandy Jones voting for Heidi Sowder as Chair.

Gary Willis and Walt Rekuc voting against Heidi Sowder as Chair.

Heidi Sowder was appointed as Chair.

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STAFF ANGELA RAMBEAU:

Okay, Heidi is our next Chair. Although it was not on the agenda, we might as well nominate a Vice Chair while we are at it.

MARCIA PARSONS:

I nominate Walt Rekuc as Vice Chair.

GARY WILLIS:

I second Walt Rekuc as Vice Chair.

HEIDI SOWDER:

I nominate Sandy Jones. Scott Kilgore seconded nomination for Sandy Jones.

WALT REKUC:

Again, as I am the challenger, once again I would say that in the event Heidi is not at the meeting, I think I would do a very good job. Nothing against Sandy, but again this is something I do as a profession and something I am very knowledgeable about. I have probably written more codes than most folks have seen or helped write. I think that helps us sometimes in understanding how they are applicable for many of the cases that we have before us.

SANDY JONES:

I have enjoyed being a Vice Chair and have been an active member of the community and worked on several zoning related issues over my tenure in what is now the City of Milton. I do bring engineer knowledge as a licensed engineer and do understand a lot of the developmental issues. I appreciate that Walt does bring an exceptional amount of experience to the position.

STAFF ANGELA RAMBEAU:

Okay, then I will close the nominations and take the vote.

VOTE: 3-4

Marcia Parsons, Todd Chernik and Walt Rekuc voting for Walt Rekuc as Vice Chair.

Scott Kilgore, Gary Willis, Heidi Sowder and Sandy Jones voting against Walt Rekuc as Vice Chair.

4-3

Sandy Jones, Scott Kilgore, Gary Willis and Heidi Sowder voting for Sandy Jones as Vice Chair.

Marcia Parsons, Todd Chernik and Walt Rekuc voting against Sandy Jones as Vice Chair.

Sandy Jones was appointed as Vice Chair.

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STAFF ANGELA RAMBEAU:

At this time I will turn the meeting over to the Chair, Heidi Sowder.

HEIDI SOWDER:

Thank you Angela. I guess our second order of business will be the approval of the December meeting minutes. Angela, you said that nobody had any changes.

MOTION AND SECOND: Heidi Sowder made a motion to approve the December, 2007 meeting minutes. Seconded by Scott Kilgore. **VOTE: 7-0.** Motion unanimously carried.

HEIDI SOWDER:

Okay, then the next item is the consideration of application for variances.

HEIDI SOWDER:

Stated applicant will have 10 minutes to present his or her case. The Board will then address questions to the applicant and public comment will then be allowed. Each speaker for public comment will have 3 minutes to make their points. Following public comment the applicant will be allowed 5 minutes for rebuttal.

HEIDI SOWDER:

Would staff please present the first case?

STAFF ANGELA RAMBEAU:

Read V07-021 the requested variances being requested by Blue Valley Subdivision, being brought forth by David Caragher and his attorney, Wendy Butler. Property is located at Birmingham Highway and Liberty Grove Road.

HEIDI SOWDER:

Will the applicant come forward to present and state your name and address for the record.

WENDY BUTLER (attorney for David Caragher), 11330 Lakefield Drive, Johns Creek, GA:

Good evening ladies and gentlemen. My name is Wendy Butler. I am an attorney here on behalf of the applicant, David Caragher. What we have before you this evening is 200 acres of a 400 acre development called Blue Valley. Blue Valley is a 200 home equestrian theme luxury subdivision on 400 acres half located in the City of Milton and half of incorporated Cherokee County with frontage on Birmingham Road in Milton. Blue Valley has been designed to incorporate the natural beauty, specimen trees and the existing 24 stall stables and show barn on the site to create a naturally integrated residential environment complete with nearly 100 acres of green space and parks, four lakes, equestrian paths and walking trails. Of the 200 homes that will be constructed, 96 of them will be located in the City of Milton on 192.6 acres. Over 61 acres of this area will be open space in the

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City of Milton's side. Over 100 acres total in the entire Blue Valley Development. Blue Valley meets the density standards, the lot widths and the lot frontage requirements of the AG zoning. However the applicant has requested a variance from the Board of Zoning Appeals to allow a reduction in the building line setbacks due to the sloping topography on the site and the existing natural features of the site including streams that run through the site, ponds that are on the site and to avoid a number of specimen trees. Particularly, in order to locate a septic field on each one of these lots, the developer would like the flexibility of again preserving some of these specimen trees and making sure that they have some flexibility with the setbacks so they can maintain view corridors, protect trees, protect the sloping topography and erosion control where you have a lot of trees that run primarily through the property and there are also some lakes on the property.

The blanket setback would be the 60 foot setback would be reduced to 35 and the side yard setback would be reduced from 25 to 15 and the minimum side yard setback would be reduced from 40 to 50 and the rear yard setback from 50 to 35. Every single lot would not have every one of these variances. The idea is to work with the department as they are moving forward with development plans so they can locate the home in strategic locations so they can again preserve on each individual lot the number of specimen trees that they can, protect and move around so that they can avoid the slope where it is very deep on the site in the front and in the back where you have streams again running through the property. As you know, the standards for variances are *is the proposal in harmony with the general purpose and intent of the zoning ordinance and through the application of a particular provision, do they impose an unnecessary hardship on the property.* We believe that the request meets both of those standards. First, the request is in harmony with the intent of the ordinance and is in harmony with not only Kingsley Estates, but a number of subdivisions that are in this area. Not only Kingsley Estates, but also Triple Crown, White Columns and Hickory Crest, all of which have similar setbacks that also have smaller lots in some cases than what is being proposed here. The setbacks are important to promote safety by preparing the structures, separating the structures to decrease the possibility of fire and to preserve present property values in the area. This is a very high end community and the internal setbacks will benefit the adjacent property by again protecting slopes where they need to be protected, putting the septic field in a location on the property so that unnecessary grading is not caused because of the topography on the property and also to preserve the specimen trees. They are located throughout, but they would like to preserve the ones that are there if possible. The rear yard setbacks abut undisturbed property within the Little River flood plain. They also own the land again on the opposite side of the river which is in Cherokee County.

With regard to the hardship, as you all know, the hardship of the property is the topography as well as the existing specimen trees. The Georgia courts have upheld both of those as hardships in justifying variances. Again the topographic changes on the individual lots frustrate the ability to place the septic in a location without unnecessary sacrifice to the stream buffers, the waterways and the natural trees and view corridors. There are a number of trees on the property that they would like to preserve.

I would like to answer any questions at this time and reserve time for rebuttal.

HEIDI SOWDER:

My first question is, has the final plat for this section of the development been submitted and approved at this time? Can this change?

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WENDY BUTLER:

Not yet. That will be done after the lots have been drawn after this approval. Each of the lots before you meets the minimum setback requirement. What they are saying is they would like some flexibility in each one of those lots to accommodate the variance setbacks. Based on whether they get approval tonight, then they will draw the subdivision and submit for plat so that it is not duplicated.

MARCIA PARSONS:

We have in our possession a copy of the septic plat and it looks like it is pretty well drawn up is that correct?

APPLICANT DAVID CARAGHER, 5780 Windward Parkway, Alpharetta, GA:

That is a very preliminary septic design that is required by the Fulton County Health Department to specifically demonstrate that each lot contains enough area to fit the house, reserve septic field and the primary septic field. Upon going for a building permit, an actual full scale site plan is required that is much more detailed that shows more of the topography to show the lines are following the topography and show in more detail the specimen trees. I think the plan you have is indicative of what is on site, but it is not specific to the particular house to be built on any individual lot. If you notice most of the houses are the same footprint. This is just an example to see that you can, in fact, fit all of these improvements within that one acre allotted area.

WALT REKUC:

I have two questions. Mr. Caragher, on your lots that abut some of these stream buffers and lakes, are your lots actually in the stream buffer of those creeks, streams and lakes? I counted and it seems you have 31 out of the 96 lots that are not adjoining creeks, streams and lakes, but the majority seem like they are. Do those encompass a lot of the area of these lots?

APPLICANT DAVID CARAGHER:

They are encompassed within the allotted area but are not in the proposed -- they are in the buffer area so it would not be a disturbed area.

WALT REKUC:

So a lot of these areas where there are stream buffers and such, you just made that into open space, is that correct?

APPLICANT DAVID CARAGHER:

That is correct.

WALT REKUC:

I also noticed there are a number of lots adjoining Birmingham Highway and looks like there are going to be a private road that is going to come off a cul-de-sac service. It looks like potentially 1, 2

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or 3 lots and then it looks like another private drive that is going to need another 3 lots on a private drive - is that correct?

APPLICANT DAVID CARAGHER:

Yes it is.

WALT REKUC:

Are any of these lots or houses along Birmingham Highway both on that private drive and outside of that private drive - are there any topography issues in particular for those lots that could not allow those lots to be at least 50 feet away in the rear. In other words the rear setback along Birmingham Highway, could you live with that 50 ft. at the rear of Birmingham Highway?

APPLICANT DAVID CARAGHER:

In that particular area, the topography is not such a hardship. There is no reason we could not agree to do that. I think marketability wise that would be in our favor too.

WALT REKUC:

And the tennis courts that are backing up into that area that look like they are well outside of that 50 ft. area. Is that something that could be screened so it would keep it from being viewed from the road?

APPLICANT DAVID CARAGHER:

We will upon application for a permit for the recreation area submit a landscape plan that will indicate the berming and planting of that tree area. Some of it has been done and some trees have been transplanted from other areas on the property in that general vicinity, but more has to be done.

HEIDI SOWDER:

Going back to my earlier question about the septic, were soil studies done when you came forward for the use permit or whatever was required for this?

APPLICANT DAVID CARAGHER:

Yes, and it is still in review with the Fulton County Health Department.

HEIDI SOWDER:

Have you been given the go ahead, are the soil tests completed, are they acceptable?

APPLICANT DAVID CARAGHER:

The testing is completed and I have just received the fourth round of comments from the Fulton County Health Department today. We are well down the road of getting approval. There are just a few minor items on particular lots that she would like to see adjustments made. Again, she is not

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approving anything for a building permit, just approving it indicating that we have demonstrated that we can fit the particular house and septic and reserve area on these individual lots. Obtaining a building permit for each individual lot another more detailed plan will need to be submitted to Fulton County that they will actually permit. This is just to get the plat recorded, but they are not issuing any permits.

HEIDI SOWDER:

So what she is considering then is the 96 lots for this soil test?

APPLICANT DAVID CARAGHER:

I'm sorry, let me correct that. We just submitted the first phase. All 96 lots are permitted with a land disturbance permit. The first phase of that area will be 29 lots. The whole 96 was tested, but just went for plat final for the 29 for the essence of time. Primarily they are those along the main entrance off of Birmingham. *Referenced from site plan for Board.*

HEIDI SOWDER:

Regarding the specimen trees, I drove out to the site and it looks like it is pretty much pasture land. I did not see a ton of specimen trees within the site itself, but along the stream area I did see some specimen trees.

APPLICANT DAVID CARAGHER:

Primarily the specimen trees are in the stream areas. I would suggest that the fact that it is a majority pasture land, any tree is worth saving when you do not have many to save. We also have a very aggressive recompense and street tree program that will be incorporated. I think the number came in at 1600 units to be replaced on the property upon final completion. That is a combination of recompense plantings and a street tree program that we have initiated. There are some specimen trees, but again I would suggest whether specimen or not, any tree in the area is worth saving because there are not very many to contend with in the first place.

TODD CHERNIK:

The reason I wanted to follow-up on this is this is one of the reasons for your appeal that you would be saving a number of specimen trees. Can you estimate what number of specimen trees you expect to save if this variance is approved?

APPLICANT DAVID CARAGHER:

I am not prepared to give you that number tonight. I know that there are certain areas that are obviously more treed than others and particularly those areas that back up to the middle river basin. The idea would be that if we pull the houses up more closely to the street, we have a slope issue that we can mitigate and leave the trees buffered between that and the flood plain and pasture area down below. As you drive the site, not all of it is accessible by car. Certain areas are more densely populated by trees and I would suggest specimens as well. Referenced area for Board on site plan.

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TODD CHERNIK:

My second question also relates to the basis for your appeal and that is you would be in harmony with neighborhoods like Triple Crown and Kingsley Estates. Why did you pursue this case as a variance instead of pursuing it as a rezoning (CUP) as those other neighborhoods did?

WENDY BUTLER:

The Milton Ordinance specifically authorizes the Board of Zoning Appeals to grant variances from setbacks. When you go for a rezoning, you are altering the density from an alternative density as well as altering setbacks and others. For example, the other developments have more density than the development that is being proposed here. We are not looking to change the density in any way, shape or form from what is permitted under AG. If that was the case, then they would have applied for a rezoning, but since that is not the case and there is a specific authority for varying setbacks to the Board of Zoning Appeals. Since that is the procedure and the authority that is provided under the Milton Zoning Ordinance, that is the appropriate place in my opinion as an attorney and it is their opinion as the developer.

HEIDI SOWDER:

I would like to make a comment. This is verbatim off of the Board of the Fulton County Commissioners. From the minutes of the meeting that Kingsley Estates was approved as a CUP through the rezoning. It was approved at a density of .0661 per acre, so it is not more than one unit per acre; it is less than one unit per acre. Under a CUP it does not necessarily mean that there will be greater density. I beg to differ on your comment there. It could be given if there were sewer available in the area that the CUP is being applied, however, in an instance like this when septic is only allowed, you can still get your CUP zoning with these setbacks and not have a density greater than one unit per acre.

WENDY BUTLER:

I am sure that that is the case as well, but again, the Milton Ordinance provides specific authority to the Board of Zoning Appeals to grant variances for setbacks and because they were asking for a variance in setbacks, that is why they are before the Board of Zoning Appeals.

TODD CHERNIK:

The reason I pose this question back to you is your basis is that you would be in harmony with such neighborhoods as Kingsley and Hickory Crest which are, in fact, CUP zoned neighborhoods that went through the rezoning process, not a variance process.

WENDY BUTLER:

The development itself and the setbacks itself are in harmony with those developments.

WALT REKUC:

I have a question for Staff. On CUPs, can you explain what other things could be changed besides setbacks? Is it density, square footage of houses, width of streets, and width of the right-of-way? Is it

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all of these other issues? Last time I did one in Fulton, you basically got to open up the book and write whatever you wanted. During that process you opened the community up to a lot of other things that could be changed under a CUP if I understand correctly. That is why I am asking Staff. I want to make sure.

STAFF ANGELA RAMBEAU:

Read to Board the Development Standards. Minimum land area per unit, minimum lot area, density is set 5 units per gross area, lot width is per condition, street frontage is set, lot frontage is set, sheeted floor area is per condition, perimeter setback with the CUP specified per condition, front side rear yard is specified per condition.

SCOTT KILGORE:

I have a question for the applicant. You had stated that this would be in harmony with Kingsley Estates. We as a Board are responsible for approving variances based on the criteria that something is in harmony with the Milton Zoning Ordinance. Not concerned with the other developments, just the Milton Zoning Ordinance and the intent of that ordinance. The intent of the setbacks is to keep houses separated. If we reduce all of these setbacks I can almost guarantee that some of those houses are going to end up much closer to each other and we are not going to see a rural slate that we might otherwise see. I would ask the applicant to please elaborate on how reduction of setbacks would be in harmony of the intent of the ordinance which is to keep houses separated from each other.

APPLICANT DAVID CARAGHER:

The granting of the variance does not necessarily suggest that the houses are going to be crammed closer together. It is going to allow the land planners flexibility to move the houses about. Every house is single-handedly land-planned by a professional company. The company being used is Land Plus. You may or may not know them, but they are known nationally for their work. We are an architectural guild of 10 architects and 1 architect that oversees them. Every home is brought through that process and every home and the septic is designed in-house, the landscape and hardscape -- everything is designed in-house. The grading plan, the site plan, the house location, everything is sited, staked and approved in the field. Upon the next house coming in, all of the conditions of that particular lot are taken into consideration before the next lot is designed and each home is individually designed to fit that lot, so to suggest that we would just take houses and cram them right up against one another is really not our intent. Our intent is to allow for the flexibility to move houses from one another, move them off the steeper slopes, move them away from a possible tree situation and allow for the septic to exist in harmony with the lot and to allow less damage to be done when the house is built. That is our intent to be here to do that. I know when speaking with the other developers in the neighborhoods was exactly their intent too, to allow more for land use planning and to provide potentially less damage and activity on the lot.

WALT REKUC:

And you have worked it out with Land Plus to do your land planning for each of the individual lots -- is that what you are going to be doing? Are you doing a mass plan to begin with and then an individual plan thereafter?

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APPLICANT DAVID CARAGHER:

We do the mass plan again in a similar fashion that we do for the Fulton County Health Department. We have a streetscape idea. At that point they go back and take an individual street and we look at the certain treatments on the front of each lot, be it a hedge row, be it a fence, be it columns and such, and then every lot is assessed. We current do this on the Cherokee County side which is Phase I which is under construction right now. This is a process that is well underway and not something we are just creating. It is similar in a lot of ways to what they do at the River Club. The level of detail and design is planning out prior to the issuance of what we call an "internal permit" that we give the builder to allow him to come before you and the staff to submit for a building permit, so all of the design criteria is met prior to the builder even getting approved for the build-outs.

WALT REKUC:

Right, this is all a process. I started out with Land Plus back in 1998 where I won an award for the best design and planned subdivision. We implemented that process where we did not just on a street basis, but also on a house basis, like what you are saying. I just to make sure it is understood that there is a difference between just a subdivision. You are going through two iterations to make sure that you have your houses sited to be in the most optimal spot. Also looking at sidewalks and driveways and how everything intermingles with one another. I know they worked with me and they did a great job saving trees and we worked very hard on creeks and streams as well. This company is very much above the curve compared to many other firms.

HEIDI SOWDER:

Have PERC tests been done on this site?

APPLICANT DAVID CARAGHER:

Yes. Fulton County requires both soil science study and percolation done for each individual lot. That has been done and submitted to Fulton County. That is where we received our fourth round of comments back on today, so we are well down the road on achieving their approval.

HEIDI SOWDER:

Did the PERC results come back today and did it state you would have any problems with the existing site plan that is before us?

APPLICANT DAVID CARAGHER:

Some of the comments for example where like label the length of each of the septic lines, label the distance from the house off of the line, just more general detail. They are going to see a much more detailed plan when it comes before them to issue a permit, but at this stage these are some of the comments that are very easily done, but providing them the data that did not necessarily appear on every lot.

HEIDI SOWDER:

So they did not send any red flags to you?

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APPLICANT DAVID CARAGHER:

Not at all.

MARCIA PARSONS:

Out of the 96 lots, do you have a more specific idea how many lots actually need a variance at this point, instead of a blanket subdivision on Milton?

APPLICANT DAVID CARAGHER:

We do not and again, that is the reason for the blanket request, as that allows the same design criteria to exist on every lot and so the lots can work in harmony. I could not tell you right now what lot would and would not until we see the specific house plan design for that particular lot and how it works within that lot. For example, if you have a presale of a home or a homebuyer brings you their plan and says they want to put that plan on lot 2 and you look and say, well you know it really is not going to work on lot 2 unless we modify your house plan because of conditions, x, y and z. So with having a variance that applies to all of the lots, it allows that flexibility across the board and not just lot specific.

WALT REKUC:

I am going to challenge you again Mr. Caragher. On the portion of the property that adjoins the Thatchers, the Boyds, the Nashes, this is the portion of the land that is kind of lower. Referenced area from site plan. Can you look at those lots and see if there is any problem whatsoever in keeping the rear yard setbacks set at 50 ft. for those lots?

APPLICANT DAVID CARAGHER:

We certainly can and you made a really good point. Something we had not considered are the houses that back up to Birmingham. I think that consideration needs to be revisited and I have no problem conditioning those lots to that.

WALT REKUC:

Because of those lots are something that possibly could be worked on I think the neighbors would say that has to be very similar to what they have presently and not something that they would be impacted by as much. We have not heard the neighbors' concerns and do not want to stop until we make sure we hear their concerns. I want to make sure we are doing this correctly. That area also seems to be where you have some of your tougher topo in that lower left hand corner and is also the more wooded and heavily treed area. *Referenced area from site plan.*

APPLICANT DAVID CARAGHER:

It is, and again, the concern would be less on the rear and more on the front and sides of the lot that we could pull up the slope and get away from the steeper areas and preserve what is down closer to the flood plain and the neighbors' property.

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TODD CHERNIK:

Would you state then that you have flexibility with this plan for the lots on the perimeter and along Birmingham Road to maintain the 50 yard setbacks?

APPLICANT DAVID CARAGHER:

Yes.

HEIDI SOWDER:

Does anyone have any other questions for the applicant?

Okay, since there are no additional questions, I would like to open the floor to public comment. If there is anyone who wants to speak, please come forward, state your name and address and you have 3 minutes to speak.

LEON COLE, 16700 Birmingham Highway, Milton, GA:
Spoke in Opposition

I live directly across the street from this development. Incidentally, this development is on Birmingham Highway and not Birmingham Road. It also will have an entrance off of Liberty Road. *Reviewed some photos with Board showing various views of property including entrances.* You will note the flat topography. There is also a lake that is not shown. Most of the trees are pines. All of the trees were removed in their Cherokee County development to build the homes there. There is no hardship here and a variance has to have a hardship. It is a CUP and should be a rezoning issue and this is not a rezoning issue.

WALT REKUC:

I am just trying to make sure I understand where you live across from this property.

LEON COLE:

They redid Liberty Grove. It used to be further down, but they moved it and put it right in front of my property. *Showed Board from photo.* My house in back in the woods and is the last property on the right in Fulton County. We bought the property back in 1968.

WALT REKUC:

Does your property have a good bit of trees on it?

LEON COLE:

Yes we do and we have a garden area, but Kingsley Estates is bordering my southern line.

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HEIDI SOWDER:

Mr. Cole, when this property was originally going through for a use permit, did you ever have an occasion to meet with the developers at all -- did they have any kind of community meeting to talk about the development or anything?

LEON COLE:

Well for one thing, I had to call Fulton County because they were removing dirt from their Cherokee County Blue Valley site and dumping it in the Fulton County Blue Valley development and did not have the property land disturbance permits. Also along the old Liberty Grove Road, they dug up trees and I had to call the Fulton County arborist about that to stop them from doing that until they got the proper permits or whatever you need to remove trees. I did meet with Mr. Chatham one time and in that conversation it led to the issue of the water pressure issue.

CURTIS MILLS, 16355 Birmingham Highway, Milton, GA:
Spoke in Opposition.

This is directly across the street from the entrance of Blue Valley from Birmingham Highway. My property is the long rectangular lot. I am on about 20 acres and have lived there for 8 plus years. We have been there and watched this process from the last two owners that it has been through. I sent an email to the Board which explained my concerns but thought it was important enough to show up. Summarized points in email. I feel that David Caragher and David Chatham will do a good job with the development and I do not think we have to tell them to be tasteful. I believe they will do a quality development. It does not seem appropriate to me to grant a blanket variance that might cause problems where none need to be caused from a setback standpoint. Concern that some houses would be too close to the road to have any hope of maintaining a rural character. It is a gateway to Milton and I feel an important stretch of road from my perspective.

WALT REKUC:

I respect your opinion. I know you are on one of the city's boards. I want to make sure if we are looking at something that is interior off of the street, is that as much of an impact to the community as the Birmingham Highway areas itself? I want to protect that corridor along Birmingham Highway and those portions of the property that adjoin this subdivision I am trying to make sure we do not cause an impact to the community.

CURTIS MILLS:

I think that is a good question. My understanding of what Richard Wernick was after with his CUP zoning was internal streets. By the way, Kingsley Estates also backs up to the back of my property so I am also exposed to that. I believe his strategy or mindset was to put the houses close to internal streets, have big back yards, which benefited the adjoining property owners, and I think that is good, but it also allows the converse. If it was interior and it made sense for that little section, obviously it would not have an impact on the passers by along Birmingham Highway and I think the public is a stakeholder in this and me as a neighbor. There may be justifiable reasons for setback variances and I am suggesting that it is never called for. The reasons that Mr. Caragher gave were moral high ground issues like aesthetics and protecting specimen trees. It seems though that the variance standard ought to be high enough that it should be for a specific reason and not a general reason.

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TODD CHERNIK:

I unfortunately have a conflicting commitment, so I would ask to be excused tonight.

Board Member Todd Chernik left the meeting at 8:00 p.m.

HEIDI SOWDER:

Okay, is there any other public comment?

CARA TADSEN, 1007 Little River Way, Alpharetta, GA:
Spoke in Opposition.

I am actually on the Cherokee County side and want to bring you a feel of the Cherokee County development side. Our property is on 130 acres. *Referenced property from map.* In Cherokee County this is a conservation subdivision where all lots have to balance to two acres per lot. They have taken all of the unusable and unbuildable land and then have balance out the rest of the property to be able to get their lots. The houses that are already built over in the Cherokee County side are relatively some lots and not even a full acre. What they have been able to do in Cherokee County really should not apply to what you guys do here in Fulton County in the City of Milton. I think it is important for you to distinguish your standards versus what we consider in Cherokee County. We feel in Cherokee County that what they have done has totally taken away from the rural feel of the area. There is really nothing on Liberty Grove Road that is less than a two acre lot and the majority along Liberty Grove Road are 5-10 acres and up. This already is a subdivision because that is really what it is no matter how they want to label it. It has already affected our community and North Fulton or the City of Milton has already been impacted. I agree with Mr. Mills that I feel sure the development is going to be very beautiful, but to say it will be in keeping with the rural feel I believe is a joke. As far as the topography of the land, this is all open pasture land and there is strip along the ridge that is heavily wooded that slopes down to unusable and unbuildable lots for them along the river. The trees are not necessarily specimen trees in that area. I would encourage you to have your arborist go out and identify the trees and mark as specimen trees. To me, this does not show an adverse hardship for them to be able to use and build what they have.

WALT REKUC:

How long have you lived in that area and have you met with the Chathams?

CARA TADSEN:

Over thirty years. We did have some community meetings but he did not come and share anything. He sent his representative to say how much they were going to be bringing to the community and really what we had fought for in that area of Cherokee County was a minimum of two acres.

WALT REKUC:

We are being told that the setbacks Mr. Caragher is asking for are the same setbacks that he has in Cherokee is that correct?

CARA TADSEN:

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That is what he has referenced.

WALT REKUC:

When they were doing their work in Cherokee, were you fighting them?

CARA TADSEN:

Because of the flexibility of the conversation subdivision ordinances, they were granted that flexibility because of what they were trying to do, so that was not anything that we could fight.

WALT REKUC:

I did some quick calculations and theirs works out to be two acres per lot as well for this project, so it is similar to what was built in Cherokee.

CARA TADSEN:

The setbacks for off of the main road are necessary for certain lots. It is obvious that you cannot build on the slope that we have in the Cherokee portion because it is rather treacherous. It is understandable for them to need those setbacks and I am in agreement with the fact that lots need to be looked at individually, but when you have a person coming in with their own house plans it ought to be on a case-by-case. I think that just blanketing something gives him too much freedom to do whatever he wants to do. You guys have set up development standards for a reason and to just blanket changing that -- well I would encourage you to be wise and make sure that the lots that will affect other people are taken into consideration. We know that there are going to be changes again to what he has already had approved in Cherokee County and what you do does affect what they are going to do. I am anticipating what our next battle is going to be.

HEIDI SOWDER:

Asked is there was any additional public comment. There was none. Called applicant up for rebuttal.

WENDY BUTLER:

I just want to reiterate a couple of things. One is that the applicant is agreeable to protecting the lots on the perimeter of the property with a 50 foot setback on the rear so that the adjacent properties have the setback that they may have intended and would be consistent with the area. It is true that on the periphery of the site that is where you do have most of the flat topography, but internal to this site where you do have the streams, there is more than just slopes and the overall property would benefit not only from an aesthetic perspective, but from an environment perspective, by being able to put the house in a location where you can consider a sloping on an individual lot. Again, to reiterate, the developer will be looking at each individual lot and consider those factors so that they can make the best quality development. I understand that the other developments all have different zonings. The property in Cherokee County was not rezoned and it does have somewhat smaller lots than what is being proposed on the Milton side and that is a conservation subdivision which is not a rezoning process. The CUP designation that is on the other property in the City of Milton -- again that may be another process but the setbacks which is the issue tonight is complete consistent with those setbacks internally and externally.

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MARCIA PARSONS:

You stated that the developer would look at the individual lots. Could you tell me if it will be Land Plus looking at the individual lots and planning that or are they looking at streetscape planning only?

WENDY BUTLER:

Land Plus looks at each individual lot and designs every detail of each individual lot around specific trees, whether they are specimens or not. Also, relating to the trees, there was concerns raised about the trees by Mr. Cole removed from Liberty Road. I want to state that those trees were not removed and destroyed. Those trees were removed and relocated even the very large trees were relocated so that they could be saved elsewhere on the property, so there has been a tremendous effort and will continue to be to preserve the trees, not just because it is the right thing, but because they are beautiful and the developers want that as part of their development quality.

HEIDI SOWDER:

I have a couple of questions for staff. One for the Arborist, Mark Law. I am assuming that a site visit was not done and there is no evaluation of any specimen trees, but I wanted to ask you if you did visit this site and if you have any kind of count on specimen trees.

ARBORIST MARK LAW:

This site was visited prior when I was with Fulton County. We walked through and did have a specimen tree plan showing the trees and where they were located, so the tree survey has been done and the specimen trees are noted on the project.

HEIDI SOWDER:

So do we actually know how many specimen trees are actually outside of the stream buffer and still existing on this site?

ARBORIST MARK LAW:

A lot of the specimen trees were within the stream buffer. That is probably where the majority of them are located. Another good portion is in the area of the two cul-de-sacs of ground lots 50 and 51. Those are some that may be more impacted than most of the trees on the site. There are some specimen trees near the tennis courts but they are protected.

HEIDI SOWDER:

My next question is for Staff. Has Staff evaluated the size of the properties that are along the perimeter of this site? There are names listed on the site plan but does not indicated acres or what size the parcels were.

ANGELA RAMBEAU:

The land owners are listed on the site plan, but I have not looked to see what the sizes were.

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HEIDI SOWDER:

Does anyone have any knowledge to verify Ms. Butler's statement about the conservation subdivision in Cherokee County and whether it is necessary to undergo rezoning for that classification?

STAFF MIKE TULLER:

Typically they are use by rights if they meet the conditions of that classification they would not have to go through board of commissioner reviews. I do not know the specifics in Cherokee County, but the previous county I worked with it was the same kind of situation.

SCOTT KILGORE:

I have a question for the applicant regarding the question that was just asked about the conservation subdivision. Is that something you pursued on what was the Fulton County side and have you pursued the conservation option?

DAVID CARAGHER:

We did not pursue it, but did consider it. There was no rezoning required as Mr. Tuller stated in Cherokee County.

HEIDI SOWDER:

At this time I would like to make a motion to close public hearing.

MOTION AND SECOND: Heidi Sowder made a motion to close public hearing. Scott Kilgore seconded the motion. **VOTE: 6-0**, with Board Member Todd Chernik not being in attendance for vote. Motion carried.

HEIDI SOWDER:

Okay, I would like to open up the floor for a motion.

WALT REKUC:

I would like to have general discussion if I can.

HEIDI SOWDER:

If you would make a motion we can then discuss the motion. Public hearing has been closed so all questions and answers have been covered and at this point we need to make a motion before we can begin discussions.

WALT REKUC:

Okay, I will make a motion.

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MOTION AND SECOND: Walt Rekuc made a motion for approval conditionally, to allow reduction of the front building setback from 60 feet to 35 feet, to reduce the side interior setback from 25 feet to 15 feet, to reduce the side street setback from 40 feet to 30 feet, and to reduce the rear setback from 50 feet to 35 feet, except for those areas that adjoin Birmingham Highway or any of the exterior lots along the south and west borders of the property. Those would remain at 50 feet. Seconded by Gary Willis.

DISCUSSION:

WALT REKUC:

The reason I am making this motion is if you do a CUP there are more options that you let the applicant to change like street widths, right-of-way widths, sidewalks, building sizes, a number of other options and I do not want to allow anything to change. I think this is purely just a setback issue and is not an overall change. If you look at the definition of a Community Unit Plan, you will see the purpose of that is to create a certain unit of homes that look in a certain style. I do not think that is really what is trying to be obtained here; it is just trying to reduce the setback. I have struggled with this in other communities I have built. I did not like going through the process. I would have rather just done it this way, but many times you have to go that direction and right up all of these codes about how the lots are going to look, how the houses will look, how the streets will look, and then all the residents get involved and you are just saying it is just a setback that is all we really care about, but we have to put all of these other things in there and it made it a lot more confusing to the general public than just making it a pure variance and I think this is just a little bit cleaner and that is probably why the staff did that. They are not asking to change all the other characteristics.

SCOTT KILGORE:

I realize that a CUP gives latitude for asking for more, but if all they wanted was setbacks is there a reason they could not approach mayor and council and request a CUP for this and say all we want is setbacks and then it is up to mayor and council to decide if it needs to be rezoned in that way?

WALT REKUC:

The intent of the CUP is to encourage development of large tract land as a community plan. Read some of the purpose of a CUP. What I am saying to you is that in everything they have, I do not think they are going to change a single item of what they have designed. All they are asking to change are the setbacks.

SCOTT KILGORE:

We heard tonight that the plat is not final so I do not have any guarantees of that.

WALT REKUC:

The question comes in with a CUP that opens it up for all kinds of different densities. I am saying that it will change anything or it would even be asked for, but the problem is just by you putting CUP on a zoning sign, you have now created a whole bunch of controversy within the community about what is the CUP about. They could do this or they could do that, what are they actually asking for? You are creating unnecessary controversy when all they are asking for is a variance on the setbacks

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and that is why I think this is a cleaner way. I understand their hardship to that degree and then in addition looking at how they are in harmony with the other communities. I see that very easily that they are very much in harmony. That is why I had that thought process. In having gone through the CUP, it is a lot more burdensome on them to do that and that is where again I just feel it is a lot more complicated a process than what they are actually asking for. They are just asking for a straight variance to the setbacks. Having worked in a community where I did have that flexibility, it does make your homes feel better and look better. You can get too many people involved.

SCOTT KILGORE:

I guess having more people involved is probably a good thing. I like to see more people involved in big decisions and this seems like a big decision. It is not just a variance on a single lot or even a handful of lots, but quite a number of lots that we are talking about here.

MARCIA PARSONS:

I feel that in particular they are asking for the variance because of the septic tank which has to deal with the size and the shape of the lots, the topography, and the specimen trees.

SCOTT KILGORE:

Is the topography extraordinary and exceptional in this case? Is there something about this subdivision that makes this necessary that other subdivisions seem to be able to represent our ordinance? Our ordinance obviously takes into account the fact that people are building houses and putting septic tanks in, so if you are saying that the topography is not extraordinary and exceptional, then you are saying that the ordinance is unduly burdensome. We have to be able to establish a hardship here. We have to be able to say that this topography has something extraordinary and exceptional before we can say that there is a hardship here that deems it necessary to vary from the ordinance that has been established by our mayor and council.

HEIDI SOWDER:

I would like to make a comment. There are two provisions for which we can pass a variance on. In all honestly and the comments that were made by both the applicant and the public comment, as well as the comments from staff, that the trees were stated by the applicant to be a hardship - specimen trees. The staff went on to state that the majority of the specimen trees are really in the buffer stream areas, so to me that takes away that hardship. The soil tests have been done, the PERC tests have been done and there were no red flags raised. Regarding the topography of this site, I have been out to this site and also visited the Cherokee site. The Cherokee site definitely has some difficulties, as it is very hilly. The site on the Milton side is rolling hills and flat grassy areas. I do not see how topography could be a hardship in this case, so to say that the application of this particular provision to be okay with me and say that that is an acceptable reason to okay this variance, I would have to say no. Going on to whether it would be in harmony, I do have a problem with doing a carte blanche reduction of all of these setbacks with just the rear exception as well because on looking at the site plan that was given to us and listening to people who are from that area, they have 20 acre lots. I do not know what Mr. Cole's lot size is, but I have driven up there and I see a lot of horse farms and they have a lot of acreage. It is not a highly developed area. It is still one of the most rural areas in the City of Milton. Is that in harmony then with that particular area and the application of the zoning

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resolution in that area? I do not believe that that is an appropriate application for that and I guess that would be my comment with regard to this motion.

WALT REKUC:

I understand what you are saying about those issues, but again I do not think that they are necessarily going to change their lot layout and house layout, as they are not asking for that.

HEIDI SOWDER:

But that is not within our purview.

WALT REKUC:

And I understand that, but I think the lot configuration area if you want to look at hardship -- 71% of their lots are adjoining creeks and streams that have buffers and also typically have soils that are not as good as other areas and that is probably a unique feature compared to other subdivisions. Again, I understand your concern, but I do not feel this is going to be a problem with the conditions I placed on the road and exterior that is going to be a detriment to the community in general. I feel it will be in harmony with the other subdivisions that are across the street and adjoining in Cherokee and the other ones. I understand their hardship in some degree, but I also understand how to be in harmony and not making it not a marketing disadvantage for them compared to the other communities that they are competing against in this market. This is a very tough market to compete with. That is a criteria I look at as well.

HEIDI SOWDER:

Is there any other discussion? *The motion was repeated.* I would like to take a vote by show of hands.

VOTE: 4-2, with Walt Rekuc, Marcia Parsons, Gary Willis and Sandy Jones voting for the motion and Scott Kilgore and Heidi Sowder voting against the motion. Todd Chernik had left earlier and was not in attendance for the vote. Motion carried.

NEW BUSINESS:

There was none.

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ADJOURNMENT

CHAIR HEIDI SOWDER:

MOTION AND SECOND Heidi Sowder made a motion to adjourn the meeting. Marcia Parsons seconded the motion to adjourn. **VOTE: 6-0.** Motion carried.
Meeting adjourned at 8:35 p.m.

Date Approved: _____

Francesca Ivie
City Clerk's Office

Heidi Sowder, Chair
Board of Zoning Appeals

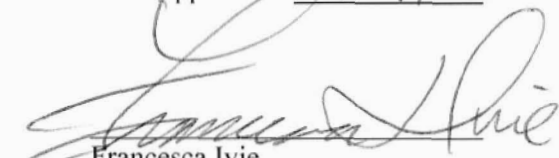
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ADJOURNMENT

CHAIR HEIDI SOWDER:

MOTION AND SECOND Heidi Sowder made a motion to adjourn the meeting. Marcia Parsons seconded the motion to adjourn. **VOTE: 6-0.** Motion carried.
Meeting adjourned at 8:35 p.m.

Date Approved: 1/19/08


Francesca Ivie
City Clerk's Office


Heidi Sowder, Chair
Board of Zoning Appeals