

MINUTES

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

BOARD MEMBERS PRESENT:

Sandy Jones
Gary Willis
Scott Kilgore
Marcia Parsons
Todd Chernik
Walt Rekuc

CITY STAFF:

Angela Rambeau, Community Development
Mike Tuller, Community Development
Mark Law, City Arborist

AGENDA:

Approval of March BZA meeting minutes	(Should be Feb. 2008 meeting minutes-deferred)
Approval of March Special Called meeting minutes	(Approved)
New business 1. Election of new officers 2. Other business	(Deferred election of new officers)
V08-006 12220 Birmingham Hwy John Wieland Homes and Neighborhoods	1. To allow a retaining wall to encroach in the 50' undisturbed stream bank buffer (Article 6 Section 5.i.) 2. To allow a retaining wall to encroach into the 75' impervious setback (Article 6 Section 5.ii.) THIS ITEM DEFERRED UNTIL MAY.
V08-008 13480 Providence Lake Drive Richard Ruthven	To allow an accessory structure (a garage) to encroach into a side yard (Article 5.1.3.I)
V08-011 13071 Hwy 9 Staples, Bob Hermann	To increase the maximum allowed square footage for a wall sign (Article 33.26.1.G)
V08-012 2410 Bethany Bend Victor Siegel	To allow an accessory structure (a barn) to encroach into the front yard (Article 5.1.3.I)
V08-013 15975 Freemanville Rd Robert Bohensky	To allow an accessory structure (a barn) to encroach into the front yard (Article 5.1.3.I)

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MEETING CALLED TO ORDER

Vice Chair Sandy Jones called the meeting to order.

PLEDGE OF ALLEGIANCE

STATEMENT OF THE BYLAWS OF THE BOARD OF ZONING APPEAL

Read by the Vice Chair Sandy Jones.

APPROVAL OF FEBRUARY 2008 MINUTES

Not all members had reviewed minutes, so they were deferred.

Motion and Second: Scott Kilgore made a motion to defer the February meeting minutes. Marcia Parsons seconded the motion. There was no further discussion. Vote: 6-0. Motion unanimously carried.

APPROVAL OF THE MARCH 2008 SPECIAL CALLED MEETING MINUTES

Board approved the March Special Called Meeting Minutes.

Motion and Second: Walt Rekuc made a motion to approve the March Special Called Meeting Minutes. Gary Willis seconded the motion. There was no further discussion. Vote: 6-0. Motion unanimously carried.

NEW BUSINESS

- (1) Election of new officers
- (2) Other business

Board deferred election of the new officers.

Motion and Second:

- Sandy Jones made a motion to defer election of new officers until the next Board of Zoning Appeals meeting in June 2008 so that all members will be present. Motion was seconded by Marcia Parsons. There was no further discussion. Vote: 6-0. Motion unanimously carried.
- Walt Rekuc stated the Board wanted to hold a special meeting to discuss stream buffers and the harmony issue. Stated the Board had discussed having the meeting on Wednesday, April 23, 2008 at 4:00 p.m. at City Hall.

Motion and Second:

- Walt Rekuc made a motion that the April 23, 2008 meeting be posted on the city's website and that it be advertised. Seconded by Gary Willis.

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Vice Chair Sandy Jones clarified that the purpose of the meeting would be to bring forth the Board's proposed recommendations to City Council.

There was no further discussion. Vote: 6-0. Motion unanimously carried.

There was no additional new business. Vice Chair Sandy Jones called the next agenda item, consideration of primary variances.

VARIANCE REQUESTS

Vice Chair Sandy Jones called the first variance request.

- (1) **V08-006, 12220 Birmingham Highway, John Wieland Homes and Neighborhoods**
 - Staff Mike Tuller stated the applicant requested that this item be deferred until the May 2008 meeting.

Vice Chair Sandy Jones called the next variance request:

- (2) **V08-008, 13480 Providence Lake Drive, Richard Ruthven** and requested Staff present the variance application to the Board.

Staff Angela Rambeau read Petition No. V08-008 to the Board. Stated applicant was seeking relief from (Article 5.1.3.I) for a variance to allow an accessory structure (a garage) to encroach into a side yard setback. She stated applicant had provided Staff with letters of support from adjacent property owners. Staff suggested the following conditions if approved by the Board: (1) applicant to follow all erosion control measures and (2) applicant obtain all required building permits.

Vice Chair Sandy Jones called for questions from the Board for Staff.

Walt Rekuc asked about the adjoining homeowners and HOA. Stated he did not have those in his packet.

Staff Angela Rambeau stated they had letters from the homeowner at 13475 Providence Lake and stated that all of the letters were the same indicating they did not object to the requested variance. Also had letters from 13465 Providence Lake Drive, 13470 Providence Lake Drive, 13490 Providence Lake Drive and 14485 Providence Lake Drive.

Walt Rekuc as for the location of those homes in conjunction to the location of the applicant's home.

Staff Angela Rambeau stated that 13470 and 13490 were adjoining, 65 and 85 she stated were across the street. Said she did not see a letter from the HOA.

Scott Kilgore asked Staff about fire protection to avoid any fire from spreading from one house to another. Mr. Kilgore asked if that was the purpose for the no-heated floor area. Stated it appeared house was fairly close to his neighbors.

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Staff Angela Rambeau stated once the buildings get a certain distance apart, there were requirements for providing a fire wall. She believed it was 20 feet.

Walt Rekuc stated there would be at least 30 ft. from the garage to the nearest house.

Staff Angela Rambeau stated the heated floors were not currently reflected in the plans and they did not want it to show up later.

Vice Chair Sandy Jones asked if the Applicant was present and if there was any public comment.

Applicant was not present and there was no public comment.

Motion and Second:

- **Walt Rekuc** made a motion to defer so that the applicant can be present to discuss the issues. **Gary Willis** seconded the motion.

Walt Rekuc stated that if applicant arrived late due to traffic, he would like for it to be back on the agenda and heard tonight.

Vice Chair Sandy Jones asked if he wished to add a friendly amendment to his motion and he stated in the affirmative.

There was no further discussion. Vote: 6-0. Motion unanimously carried to defer V08-008 with the stipulation that if the applicant arrived late that the case would be re-visited.

Vice Chair Sandy Jones called the next variance request and asked Staff to read the Petition to the Board.

(3) **V08-011, 13071 Highway 9, Staples, Tom Tyson and Chris Bryant**

Staff Angela Rambeau read the Petition for the variance to the Board and stated that the request was to increase the maximum allowed square footage for a wall sign, and was requesting relief under Article 33.26.1.G. Stated the proposed store was part of the Deerfield Place Retail Development. Primary reason for variance request would be for visibility for their store sign and that this was their hardship. She stated there would be approximately 50 trees in the parking lot directly in front of the Staples. Staff stated DOT and Stormwater had no issues with the variance request. Staff's had no recommended conditions if Board grants variance.

Vice Chair Sandy Jones asked Board if there were any questions for Staff and if applicant was present.

There were no questions of Staff.

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Applicant Tom Tyson, 440 Six Flags Parkway, Mableton, GA stated that Mr. Chris Bryant would be presenting for Staples.

Applicant Chris Bryant, 87 Arbor Hills Road North, Talking Rock, GA stated he would be representing Staples and would be the General Manager for the Staples in question. Thanked the Board for the opportunity to come speak this evening about the variance. Some of the key points that we were concerned with the sign is the huge setback from the road and not only the out parcel buildings that are there, but they are directly in front of the Staples building and the height of those buildings will block the view of the Staples building, so there would be a very short window as you would be driving down Highway 9 to see the Staples building. That is why we want to increase the letter set so the Staples sign will be seen more easily. He stated that also with the smaller representation on the pylon sign we feel this would impede traffic to our building and potentially hurt sales. Mr. Bryant said by allowing them to properly advertise their store to local traffic they would feel that their store is receiving maximum exposure to local traffic. Feels that not having the proper visibility would impact their business.

Applicant Tom Tyson shared the Staples rendering of the building with the Board. Stated they were really just asking for 12 inches in vertical height going from the 4 1/2 ft. tall to the 5 1/2 ft. tall letters.

Scott Kilgore asked about the 4 1/2 ft. letters.

Applicant Tom Tyson stated that the 4 1/2 ft. tall letters was the 100 sq. ft. and the 5 1/2 sq. ft. would be the 151 sq. ft.

Applicant Tom Tyson stated that according to his drawing at 5 1/2 ft. in height, the width would be 27 ft. 6".

Todd Chernik asked what the width and height of the white fascia area was in the location of where the sign would be placed.

Gary Willis asked if applicants knew there were going to be out buildings near the Staples before they bought the building.

Applicant Chris Bryant stated they did not know there were going to be that many. They were surprised about the height of those buildings that were going to be directly in front of the Staples building, and that those would over-shadow their building and affect the visibility.

Discussion with Board, Applicants and Staff about the different measurements and recalculating the figures.

Vice Chair Sandy Jones asked when did they discover there were going to be many out-parcel buildings and their heights.

Applicant Chris Bryant stated they just found this out a few weeks ago.

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Vice Chair Sandy Jones asked if the issue had been discussed with the developer.

Applicant Chris Bryant stated not that he was aware of.

Walt Rekuc asked applicants where the vegetation was located and what would be obscuring the view from their sign from the street.

Applicant Chris Bryant stated there was going to be a little side street in between the out-parcels and there were going to be trees there that would be going up in front of the building.

Scott Kilgore stated in the bylaws it states conditions *from existing foliage*. He said he thought the trees were going in as part of the development and not something that was there preexisting. He said he did not see how they could consider the trees as a hardship in this case because of that.

Applicant Chris Bryant said the trees were not their primary concerns, but mainly the out-parcels in front of their building.

Walt Rekuc asked that regarding the trees, if they had waited a couple of weeks and found out that the trees were already in place and then asked the Board to review it under the existing conditions, would that have perhaps changed things? He said their impact from those trees may be much greater now because of that.

Tom Tyson stated he had calculated the width would be 23 ft. on the 4 1/2 ft. tall lettering.

Continued Board discussion about the various height and width measurements.

Scott Kilgore said if the issue is out-parcels blocking the view or the trees blocking the view, we are talking about the size of the sign not the height of the sign. Mr. Kilgore stated the sign is not getting any taller so you can see it above the trees. He said he did not see how the size was going to improve that situation.

Tom Tyson said that right where the actual roofline of the out-parcels is indicated, that is right now visually about half way up a 4 1/2 tall letter, so if Staples can increase the size, that would allow people traveling south on Highway 9 to see more of the letters from the top. He said they are trying to work with the City of Milton and were only asking for a minimal amount but it would have a major impact on visibility from that direction.

Vice Chair Sandy Jones asked if applicant had pictures or anything that showed the visibility and what people traveling down Highway 9 would see.

Tom Tyson stated they did not bring anything in to reflect that.

Walt Rekuc asked how far was their sign from the ground up to the bottom of the letters.

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Tom Tyson stated between 22 and 23 feet and were all one story.

Walt Rekuc they could be one story with barriers to hide the air-conditioning units which when you start adding the flat roof, makes it two stories in some places. Mr. Rekuc asked applicant to talk to the Board about their marquee sign out front. He said he noticed there was a little bit of a lower building down there. He asked how that happened. Mr. Rekuc said it was probably more than 500 ft. back when driving down the road.

Tom Tyson stated all they had was a 6 inch size letter on that and pretty much the way it was divided up between the major tenants that was what Staples ended up being allowed to have was that particular size. He said you have to also factor in the amount of speed people are traveling going down the road at 50-55 mph.

Referenced area on their site plan and discussed with Board.

Scott Kilgore asked Staff if there were any plans in the works to reduce the speed limit through that congested area or would that remain 45 mph.

Staff Mike Tuller said as far as he knew, there were no plans, as it is stated regulated so somewhat difficult to adjust the speeds. He stated that the proximity of the new traffic signal at Webb and State Road 9 would greatly reduce the traveling speeds. Currently there are really no traffic lights until you get to Windward Parkway, so a lot of the northbound traffic and southbound traffic is traveling at a high rate of speed because of the lack of signals in that area. Once there are signals it would drastically reduce the speeds.

Scott Kilgore asked if there would be a traffic light at the main Deerfield entrance.

Staff Mike Tuller state there would be a traffic light in the future, probably early next year. There was also one being proposed for Deerfield and State Route 9 also.

Scott Kilgore asked where the lights were going to be located.

Brian Snelling, 1450 S. Johnson Ferry Road, Atlanta, GA stated he was with Sembler, the developer on the project. He stated the traffic signals that were going in first would be Webb Road and Highway 9 and would be vertical by the end of the month and hopefully working sometime in May. He said the main entrance into Target will have a traffic signal and hopefully operational by the middle of June and then the next one would be at Deerfield and Highway 9 to the far north end of the site. He said perhaps it would be working by the end of the year or the first of next year. The city just submitted the application to GDOT so they have to go through their normal process and approve it and then it can be installed. There is no traffic signal at the main street that comes in closest to Staples.

Walt Rekuc asked Mr. Snelling if the marquee sign for Staples was just the one sign.

Brian Snelling stated that because of the sign ordinance, they were only allowed one for the first Phase. He said the first Phase ended roughly just north of Petco, so they only have one monument sign on Highway 9 for the whole development. They tried to split that up by the major tenants. He told the Board since Target is the biggest retailer in the shopping

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center, they got the bulk of the square footage of the 64 sq. ft. that was allowed on the one sign. He said that did reduce the smaller presence on the monument sign. He stated that had anticipated coming in and asking for a variance for that monument sign because 64 sq. ft. is not that large of a sign for visibility purposes for the tenants. He said they decided not to request that and let some of these tenants that needed better visibility go before the Board to request their variances.

Walt Rekuc asked Mr. Snelling to talk about the landscaping and where trees were being placed in the parking lot area near Staples. Mr. Rekuc also asked what types of trees there were.

Brian Snelling stated that based on Fulton County's Landscape Ordinance and the City of Milton Ordinance, around the perimeter of the site there was a 20 ft. landscape strip with a 3 inch caliber tree every 30 ft. with shrubs underneath and then inside every parking lot islands, about every 5 parking spaces there is a parking space island, there were two trees in those as well. Mr. Snelling stated there were probably 50 plus trees just in that general area. The trees are Lace Bark Elms and Willow Oaks. He said the majority were Lace Bark Elms.

Referenced location for Board from the rendering.

Todd Chernik stated Staff had an answer to his question raised earlier about the size of the fascia area that the sign would be placed on excluding the columns.

Staff Angela Rambeau stated not including the columns, the size would be 48 ft. 5" wide and 13 ft. 4" tall.

Sandy Jones asked if there were any additional questions for the applicant or any other public comment.

There were no further questions.

Public Comment:

Dawn Gilmer, 2455 Bethany Bend, Milton, GA (Opposition). Ms. Gilmer commented she was interested in the comment that Sembler made about allowing Staples to go for the variance. She stated she thought there were rules in Milton. She said he sounded like they would have great business in the fall, and they already had the road entrance sign, the marquee which everyone has already seen several times already. She did not feel that people go back because of the sign, but for the business and appropriate salesmanship. She stated she did not believe they should go for a larger sign.

Vice Chair Sandy Jones asked if there was any other public comment.

There was no additional public comment.

Vice Chair Sandy Jones asked if the applicant had any other comments in rebuttal.

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Applicant Chris Bryant stated that Target had 150 sq. ft. sign on their building. He said that their concern was the initial impact of the sign being new to the community.

Vice Chair Sandy Jones stated that if there was no additional public comment, the public hearing would be closed.

Motion and Second: Walt Rekuc made a motion to close public hearing. Seconded by Sandy Jones. There was no further discussion. Vote: 6-0. Motion to close public hearing unanimously carried.

Walt Rekuc asked Staff if the 22 ft. was because that was the maximum height allowed or was there some regulation which states that was the height that it has to be at and it cannot go any taller. He said he was trying to deal with the issue of trying to be taller than trees or taller than buildings. He asked about the height limitations on signs.

Staff Angela Rambeau stated that the sign ordinance does not address the height limitation on a sign or where it needs to be placed on a building other than to say that you cannot cover up architectural features.

Marcia Parsons stated she had some concerns about the size of their sign versus the size of the building versus the size of Target and their signage. She said it seemed that Target was such a larger building with the same size sign that Staples was asking for.

Motion and Second: Todd Chernik made a motion to deny the variance application V08-011 to increase the maximum amount of square footage for a wall sign as it does not appear that the applicant has shown that they would be harmony, nor did it appear the applicant had met the requirements for conditions resulting from existing foliage or structures bringing about a hardship. Seconded by Scott Kilgore.

Discussion:

Walt Rekuc stated he does this thing quite a bit and said it makes it very difficult to help a location when it is situated so far off of the road and it is being obscured by trees and it is being obscured by other buildings. He wanted to do whatever he could to help businesses in the community. He said he did not think people would notice the difference between 4 ft., 4 1/2 ft., 5 ft. or 5 ft. 6" when you are 500-600 feet off of the street. He said he thought the size was fairly minor in the overall scope of the front fascia of the building. He said his point was who chose 100 feet and the decision in different communities where one says 100 ft. and one says 125 or 140. He stated a lot of communities use the 5% rule. That would make it 5 ft. by 20 something ft. width. He stated he did see the hardship and the relevancy of making it slightly larger.

Todd Chernik spoke in defense of his motion and stated that the sign was fairly classic and that the fascia itself was basically like a picture frame which gave them in excess of 500 sq. ft. of framing for their sign. He said in addition from a harmony standpoint, the Staples building looks to be about a tenth of the size of the Super Target and that Target has 150 sq. ft. of front facing signage. Therefore, he feels that the 500 sq. ft. of picture framing should overcome whatever concerns they had about screening and the fact that 150 ft. requested would not be harmonious using their anchor tenant, Target, as an example.

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Vice Chair Sandy Jones asked if there was any additional discussion.

There was no additional discussion. The Vice Chair restated the motion.

Vote: 4-2, with Scott Kilgore, Todd Chernik, Sandy Jones and Marcia Parsons voting in favor of the motion to deny and Walt Rekuc and Gary Willis voting in opposition. The motion to deny carried.

Chair Sandy Jones called the next agenda item

(4) **V08-012**, 2410 Bethany Bend, Applicant, Victor Siegel.

Staff Angela Rambeau read the Petition for Variance V08-012 to the Board, and stated the variance requested was to allow an accessory structure (a barn) to encroach into the front yard in accordance with Article 5.1.3.I. She stated to the Board that this property was zoned AG-1, and that Site 1 was determined to be the better location for screening from the neighbors. She advised the Board that the arborist advised that there were no specimen trees that appeared would be affected.

Applicant Victor Siegel, 2410 Bethany Bend, Milton, GA presented his application to and explained his need for a variance to the Board. He stated they had been looking for property in the North Fulton area for sometime to build and that would be adequate for their horses and thought Milton had everything they had been looking for and was very accessible to where they worked and they wanted to settle in this area. He said he had checked with the city prior to purchasing the property and determined he could bring his horses as it was zoned AG-1 and there were other horse owners around them. He stated he had walked the site numerous times and found two sites that would be suitable for the barn he wanted to build. He explained to the Board that there were two locations that could be suited to build the bar and he could still do that, but he felt those spots would not be in harmony with the neighborhood. Mr. Siegel stated as with his previous home location and the barn he and his wife built, they went through great lengths to make it fit with the setting of the land and with the main structure. He told the Board that is his intention here in Milton as well. He stated they were not going to clear cut any pasture and that they had found a type of grass that will grow in low sun so they can keep as many trees as possible. He indicated most of the trees on the site were just tall pines, but no specimen trees. He said they would just be select cutting where needed and then would be planting maple trees along the driveway coming up to the house. He stated their concerns were to address the tree-cutting and making sure their neighbors were okay with what they build. He stated the north neighbor has a barn and thought the located they would like to construct their barn on would flow nicely with their property. He stated he did hear there was a complaint from one of their neighbors who abuts Bethany Bend regarding the cutting of trees.

Applicant had discussion with Board regarding tree area referencing site plan diagram.

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Applicant told Board that there was a dense forest of trees even with his neighbor on the east. Mr. Siegel stated there would not be any problem with visibility due to the amount of trees and explained that they paid a lot of money for the property and want to maintain the value of their property as well as others in the area. He told the Board they were going to spend money to create a stucco facade on the barn and match the colors, windows and roof structure with as many features as possible with the main house. He said it would look like a mini version of the main house and would be aesthetically pleasing.

Vice Chair Sandy Jones asked if the Board had any questions of the Applicant.

Walt Rekuc welcomed the Applicant to the neighborhood and said they were glad to have him. He asked Applicant if he was planning to install any additional fencing.

Applicant Victor Siegel answered that the present fence is a 4 x 4 fence that really just supports an old torn up 4 x 2 horse fence that was property 15-20 years old. He stated there were going to put up a Kentucky 4 rail fence. He said the existing fence is a white 3 rail fence that they were going to keep and it would run the entire easement to keep it in concert with what was there. Mr. Siegel stated the only addition they would have to make would be wherever there was a pasture that came up to the fence a hot wire would have to place in so the horses and us would have more protection. He said the rest of the fencing along the back of the property would be Kentucky 4 rail and would be black fencing as it would blend in better with the forest belonging to the back neighbors.

Walt Rekuc asked if he had any letters of support from his neighbors.

Applicant Victor Siegel that there was some dissent. He said the neighbors bordering Bethany Bend he had spoken with. They had two issues. (1) They did not want horses. Applicant said the neighbors directly to the east of them which are closer have horses. Mr. Siegel stated the property was zoned AG-1 and he was allowed to have horses. He explained to the neighbor that he did not want to upset anyone. We talked about the possibility of my neighbor coming out and help him select the various trees. (2) Objected to the cutting of the trees. Lastly, there was some concern about the odor from the horses. He explained to the Board that there was a great distance between their house and the neighbors as well as the fact they have a dump trailer on site next to the barn, all the manure is cleaned up, they have a caretaker and the barn was cleaned three times a day. He stated the manure was removed once a week to a nursery that bags and sells it. There is also a fly system that would be installed in the barn. He told the Board this was not a breeding facility or a commercial boarding facility, but just for their personal enjoyment and the horses.

Walt Rekuc asked if there was a plan for the actual barn showing the colors, etcetera.

Applicant Victor Siegel presented plans for Board to look at and referenced the barn area.

Applicant Victor Siegel explained to the Board the color had changed and is now more of a taupe, a natural color with the trim being an off-white, the roof would be a metal color that would match the asphalt singles that are on the house, and the eaves would be copper the same as the house.

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Walt Rekuc asked how many horses would be on the property.

Applicant Victor Siegel stated there would be five horses.

Walt Rekuc asked the city arborist if there had been any problems with pine beetles on the pine trees.

City Arborist Mark Law stated he did not observe any.

Walt Rekuc asked Staff if there were any buffer issues.

Staff Angela Rambeau stated there was no buffer requirement as the property was zoned AG-1 and further, he would not be able to clear in a buffer area.

Scott Kilgore asked about the acreage indicated on the yellow portion of his diagram that would need to be cleared.

Applicant Victor Siegel stated it was basically about two acres. He said the property was a total of 6.77 acres and they would be clearing out approximately two. He stated the property is beautiful and the previous owners had lights under a canopy shining on the trees lining the driveway, so he wants to maintain the beauty that is already there and just enhance it. He told the Board the land would not be clear cut. He indicated he had his tree people out on the property and selecting the hardwoods against pine trees. He stated he wants to keep as many hardwoods as possible.

Vice Chair Sandy Jones asked Applicant about his site references for Site 1 and Site 2.

Applicant Victor Siegel explained where he showed the area for Site 1, he was going to build just a shed row barn which was just a long row of barns that was covered on three sides and no variance would be required and it would not be visible. He said after visiting the site several times, he saw Site 2 and thought that would be the most beautiful setting for themselves, the neighbors and the area.

Vice Chair Sandy Jones asked for clarification from site diagram of the location of Site 2 and where the pond was on the property.

Applicant Victor Siegel said that Site 1 was the more desirable location visible when driving up to his property. He said if he was not granted the variance, he would still like to construct a breezeway type barn where Site 2 was referenced. That would encroach about 10 feet in what would technically be the front of the property.

Board reviewed the barn areas from diagram for Sites 1 and 2.

Applicant Victor Siegel stated the distance from his south property boundary to his neighbor's house to the south was about the equal distance from that same boundary to the other side of where their pool was located. He told the Board the south property owner had a huge expanse of dense forest located in that area and that even in the winter you could not see where the barn would be.

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Vice Chair Sandy Jones asked the City Arborist Mark Law about the selective cutting and would the city be involved in the decision-making.

City Arborist Mark Law stated he could go by to take a look at what he was planning to do to make sure they were not clearing large lots and specimen trees. He stated the applicant did not want to clear out all of the property, but would allow him some pasture area and that he would not be able to clear out all of it.

Vice Chair Sandy Jones asked if the City Arborist could go by and take a look to make sure there would not be any concerns.

City Arborist Mark Law stated that would require a pre-construction to the property and the trees would have to be marked or they could discuss the removal before they are actually removed.

Vice Chair Sandy Jones asked if the Board had any additional questions of the Applicant or if there was any other public comment.

Dawn Gilmer, 2455 Bethany Bend, Milton, GA (Support) Stated she lived across the street on Bethany Bend, which would be the south property to Applicant's. Stated she had a general question for staff and that was how many horses per acre are allowed in agricultural property. Her other question was the common drive other for 3 homes. She had concerns about accessibility for a fire truck to go down that road. Ms. Gilmer stated she was excited about Mr. Siegel's venture, but had safety issues about the homes and the barn.

Staff Angela Rambeau stated the ordinance does not address how many horses can be on a particular piece of property. The one horse per fenced acre does not apply to AG-1 property.

John Migel, 2400 Bethany Bend, Milton, GA (Opposition) stated he owned the back house to the property in question. His concern was about the distance stated for the barn being 100 ft. from the existing property line. He disagreed with the distances and stated the property line was the driveway. He stated his front yard was not 100-150 ft. from where the barn was to be built. Mr. Migel said his other issue was that the pond drained through a ditch to where the second site would be and flows into a creek and had environmental concerns about that. Mr. Migel said all his concerns were for the proposed Site 2 and not Site 1.

Board reiterated with Mr. Migel that his concerns were only with Site 2 and not Site 1.

Staff Angela Rambeau stated for the record that they had received a letter from a Mr. Howard Garrett, owner of adjoining property located at 2420 Bethany Bend who stated he was in opposition to Site 1.

Board was presented with a copy of Mr. Garrett's letter for their review.

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Gary Willis asked staff to state the reasons for Mr. Garrett's concerns for Site 1.

Staff Angela Rambeau stated he was referring to a section under AG-1 zoning that specifies uses like a riding stable, but this use is not for a riding stable. He also stated that the environment would be irreparably damaged by the removal of hardwoods and pines and the possibility of deer and other wildlife habitat being destroyed. Mr. Garrett referenced Section 4.8.1 and that that section would be violated due to the 100 ft. setback requirement.

Mr. Garrett was not present at the meeting.

Marcia Parsons asked Staff if they had confirmed that the Applicant did have 100 ft. from the property line.

Staff Angela Rambeau stated that the site plan that was included at Phase I had a 100 ft. boundary drawn.

Vice Chair Sandy Jones asked if Mr. Siegel had any rebuttal.

Applicant Victor Siegel wanted to respond to Mr. Migel's and Howard Garrett's comments. He stated that Mr. Garrett's property is directly to the south of his and his entire front yard was virtually just one cleared pasture. He stated he had no intention of doing that to his property. He asked the Board to look at the aerial view of the property and stated it was fairly accurate to the survey he had done recently. He stated to address Mr. Migel's concerns, before he would put up any fence or start any construction, he would make sure the survey was done, and was going through the additional expense of \$5,000 to have every pin marked. He told the Board there were multiple legs following the legal description from when the property was subdivided. He said he has been very careful to determine exactly where his property boundaries were within a few feet. He told the survey that in addition to the pins, he wanted the surveyor to tag every 25-50 feet if it is not in a clear site line before any fence is erected or before any barn was situated whether it is Site 1 or Site 2. He stated that Mr. Garrett still had probably 250 ft. of dense forest remaining before applicant selectively cuts. He stated he had no intention to do to the property in question what Mr. Garrett has done to his property. Mr. Siegel said if the Board granted the use of Site 2, the 100 ft. setbacks established come from the property line, not from the driveway easement. This was clarified with the city before I started and that is what was referenced on the survey. He further stated that there were multiple layers of setbacks represented because there is a standing body of water that requires a 75 ft. setback. He told the Board additionally in the Site 2 location there was a stream that flows in and out of the pond which requires a 50 ft. setback of the undisturbed natural vegetation. He stated this was the reason for the different calculation of setbacks. Mr. Siegel stated he was meeting with the surveyors tomorrow and he made the assurance that nothing would be built on anyone's property.

Walt Rekuc stated it did not appear that the property line was not quite correct on the aerial picture. Made a notation on where he believed the property line was.

Board discussion with Applicant regarding the property line at Board's dais.

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Vice Chair Sandy Jones stated public hearing was closed.

Discussion about reopening public hearing as a neighbor wished to make a comment.

Motion and Second: Walt Rekuc made a motion to reopen public hearing to hearing comment of Mr. Siegel's neighbor. Gary Willis seconded the motion. There was no further discussion. Vote: 6-0. Motion unanimously carried.

Friendly Amendment to Motion: Walt Rekuc made a friendly amendment to his motion to allow applicant rebuttal after the neighbor's comments. Sandy Jones seconded the motion. Vote: 6-0. Motion unanimously carried.

John Migel said that Mr. Siegel paid \$5,000 for his survey and that he himself went through one several years ago and spent about \$6,000 for the same thing, so his surveyor is coming back out to revisit the pins. He stated if there was going to be an issue about the second site, there would need to be clarification from the surveyors. He stated for clarification in response to Sandy Jones question that he was only concerned about Site 2 and having the barn so close it would be in his front yard.

Applicant Victor Siegel stated the surveyor would be out tomorrow. He said with the new surveying techniques and satellites, it was not expecting there would be any issues. He stated he was not looking to usurp the setbacks from the pond, not looking to usurp the 100 ft. setbacks whether it be Site 1 or Site 2, and the only reason requesting the variance for either site is because a small portion of Site 2 would pass the front line of the house and all of Site 1 obviously is in the front of the house.

Vice Chair Sandy Jones closed public hearing. The Vice Chair asked if there were additional questions or comments from the Board and if there was a motion.

Motion and Second: Gary Willis made a motion to approve V08-012 for Site 1 to allow an accessory structure due to extraordinary and exceptional conditions pertaining to that property because its size, shape or topography would create an unnecessary hardship for the owner while causing no detriment to the public and that any fencing should match the style and color of the adjoining property and further that no specimen trees shall be removed for placement of the barn or pasture per city arborist, and the applicant will meet with the city arborist before any trees are removed for tagging. Seconded by Scott Kilgore.

Discussion:

Scott Kilgore stated he believed the motion was based on hardship. He said he also thought this action would be in harmony with the ordinance.

Reiterated and concurred with Staff's (Jimmy Sanders') Site Plan Review comments regarding the intent of the ordinance and how the requested variance would be in harmony therewith.

There was no further discussion.

Vote: 6-0. Motion unanimously carried.

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Vice Chair Sandy Jones called the next agenda item

(5) **V08-013**, 15975 Freemanville Road, Applicant Robert Bohensky

Staff Angela Rambeau made the statement to the Board before the reading of the next matter that the applicant Richard Ruthven (V08-008) which had been earlier deferred due to applicant not being present when case was called, had arrived and that his case would be heard last.

Staff Angela Rambeau read Petition V08-013 and stated the requested variance was to allow an accessory structure, a barn, to encroach into the front yard (Article 5.1.3.1). She stated the site was located at 15975 Freemanville Road and was zoned AG-1 and consisted of two acres in the NW Fulton Overlay. Staff stated the barn was to be used for equipment and storage, and that there were no issues from focus meeting. Applicant would need to apply for a demo permits for the out-buildings and the city arborist stated no specimen trees would be affected by the proposed barn. Said staff recommends that if the variance request is approved, the following conditions should be added: (1) Applicant should maintain the existing vegetation along Freemanville Road and (2) Applicant should remove the two existing out-buildings.

Vice Chair Sandy Jones asked if there were any questions for staff.

There were no questions.

Applicant Robert Bohensky, 15975 Freemanville Road, Milton, GA stated his variance request was just to build a barn on his property.

Vice Chair Sandy Jones asked if there were any questions for the applicant.

Scott Kilgore asked if there were any other areas on his property to locate the barn.

Applicant Robert Bohensky stated there really was not because the slope on the west side of the property was very steep and runs down to the pond on the property and is very wooded and the other area of the property is actually two ponds. He stated that the house is practically sitting on one of the ponds.

Discussion with Board and Applicant regarding location of barn referencing drawing.

Gary Willis asked if applicant was taking down two or three buildings.

Todd Chernik asked Staff if there were any setback restrictions for this AG-1 property.

Marcia Parsons asked about the 100 ft. requirement from the property line for livestock or horses.

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Staff Angela Rambeau stated there was a minimum 25 ft. side setback. Explained to the Board that since this property was zoned AG-1, they would also be exempt from the 100 ft. requirement and that applicant had no plans for horses on the property.

Applicant Robert Bohensky stated his purpose was to build a barn to be used to store trailers and other equipment.

Todd Chernik stated he had two questions regarding the setbacks. (1) One concern was the 15 ft. off of Freemanville Road which is a thoroughfare road for Milton and if there might be any flexibility to move off of Freemanville Road some and (2) The 10 ft. off of the side yard zoning requirements would be for 25 ft. off of the side yard. Asked Applicant if he had the ability to move the barn 25 ft. off of Freemanville and 25 ft. off of the side yard.

Applicant Robert Bohensky reiterated that it would be again right in front of his house. He stated there was only one area where the driveway comes down the hill and crosses over a culvert so the spot he chose was the best one for the barn if he could remove the old buildings that are there now.

Walt Rekuc stated that they had an issue with the materials on a site not too far from this location on Freemanville Road.

Walt Rekuc asked Staff if the materials would have to be reviewed by the Design Review Board to get approved.

Staff Angela Rambeau stated that since this was a single family use it would not go before the Design Review Board.

Walt Rekuc asked about the Greenhouse case.

Staff Angela Rambeau stated that was a commercial use.

Walt Rekuc asked if the side of the building was also going to be metal in addition to the roof. He said he did not think there were a lot of metal buildings in the area unless near Forsyth or Cherokee County.

Applicant Robert Bohensky stated he had no problem building the barn out of wood if the Board preferred. He told the Board the house and everything was all rough cut wood. He stated he wanted to maintain the value of his property too.

Vice Chair Sandy Jones asked Applicant if there was any chance of him modifying his footprint of the barn and asked what dimensions would meet his needs and perhaps be able to bring the line back a little bit.

Applicant Robert Bohensky told the Board the size was 40 ft. by 30 ft. and that was a rough estimate of what he would like to have. He said he did not think he could make it any narrower and have a good center door on it. He stated that shorter than 40 ft. may not work, as the objective was to try to get as much as possible in it and that was about what he would like to have.

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Scott Kilgore stated the variance before the Board was just the front yard requirement and he had heard some questions about the sides. He asked Staff if applicant met the requirements for side setbacks and side setbacks and if this was something the Board needed to address as well.

Staff Angela Rambeau stated that there was a 25 ft. side yard setback so the applicant would need to either meet that or ask for a variance request for that as well.

Vice Chair Sandy Jones asked if there were any additional questions for the applicant.

There were no additional questions for applicant.

Dawn Gilmer asked if there were any other public comments.

Dawn Gilmer stated there was another barn very close to this one, and that it was her neighbor's barn that is metal. She stated she lived at 2455 and east of her there is a brown metal barn. She stated she was not opposed to anyone having a barn like that but asked if that close to Freemanville Road was part of the sidewalk project.

Staff Mike Tuller stated there was a conceptual plan for a sidewalk and multi-use trail on Freemanville Road. He said he would have to check to find out what side of the road it was on.

Dawn Gilmer stated that would be her only concern and thought that would have a lot to do with probably how close it would be and she stated she understood that the applicant did not plan to have any horses on the property, but had a concern if he sold the property that someone might.

Walt Rekuc asked the City Arborist, Mark Law, if he had any idea regarding the shrubbery along the front and whether those shrubs were on the applicant's property or were there actually in the right-of-way. He stated he had looked at the aerial photos and it looked like they were moved off of it a good bit.

City Arborist Mark Law stated he did not know that. He said when they pulled in they noticed the shrubs and almost passed them because they did not see the house at first and were not looking for the shrubs at that time.

Vice Chair Sandy Jones asked if the applicant had any additional comments.

Applicant stated he did not.

Vice Chair Sandy Jones stated that the public hearing would then be closed.

Motion and Second: Walt Rekuc made a motion to close the Public Hearing. Seconded by Sandy Jones. There was no further discussion. Vote: 6-0. The motion unanimously carried.

Walt Rekuc stated his concern about the shrubs were that any shrubs that are there are definitely on his property and could be removed for the future and secondly, the material used on the barn he had no problem with that, but preferred that the 3 sides of the barn that

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would be visible, if applicant could use something other than metal, he would prefer that and really would prefer wood. He said he did understand applicant's hardship with the location.

Gary Willis said he understood applicant's hardship as well, but he thought the Board should perhaps considering deferring this matter to give applicant an opportunity to bring forth some drawings and some pictures and some measurements like the other people had done so that they had some idea of what the applicant was planning to do. He said they were really just guessing without that information. He said he would like to see some actual drawings and site plans. He said just his own drawing would do because they had no idea what his plans are and what materials and colors. He stated right now they are at a loss to make any decision with actually see everything.

Applicant Robert Bohensky stated he was under the impression that he need to get permission for what he wanted to do first and also he did not have a lot of money for plans and did not want to do anything until he knew how the board felt.

Marcia Parsons stated the Board needs clarification on where the shrubs are and if there is a right-of-way issue and the sidewalks. Ms. Parsons said there were a lot of unanswered questions.

Walt Rekuc told explained to applicant on how he could do his measurements on the property.

Gary Willis stated that anything the applicant could bring back to help them would be terrific.

Marcia Parsons asked applicant to look a little further at moving the barn where the other structures are a little closer.

Gary Willis stated that even if applicant moved the barn back 10 ft. it would be huge.

Applicant Robert Bohensky said what he was trying to do was avoid taking out trees.

Vice Chair Sandy Jones stated she had a procedural question for staff. She asked that if they moved forward tonight to approve the variance, they would only be approving the front setback, but based on the discussion tonight, she stated she heard that the current proposal does not meet the side setbacks of 25 feet so would the applicant have to come back a second time to address the side setbacks?

Staff Angela Rambeau said the applicant only requested a variance for the front. The Board could make a condition that he had to meet the requirement or the applicant could decide to come back at a later date and ask for a variance for the sides too. She said that either way he would be held to the 25 feet.

Vice Chair Sandy Jones asked Angela Rambeau for clarification, when the applicant comes in with a site plan, does staff usually provide guidance to bring out the fact that they may need additional setbacks that they may not know they need because they are not familiar with zoning.

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Staff Angela Rambeau stated that was something she should have noted in the staff report.

Vice Chair Sandy Jones asked staff if they deferred their motion could the board make part of that deferral be that the applicant takes into consideration the side setback even though the side setback is not part of the petition before them.

Staff Angela Rambeau said she did not see why they could not make that a part of their motion. She said at this point staff is looking at it like they will need it.

Gary Willis asked why applicant did not apply for the front and side setback at the same time.

Staff Angela Rambeau stated probably because she did not tell him to.

Todd Chernik asked if the case was deferred would it have to be re-advertised.

Staff Angela Rambeau said only if applicant adds the request for the side setback.

Marcia Parsons asked applicant could meet the side setback at the same time, would there be a monetary savings for him if he can combine him.

Staff Angela Rambeau said it would be a separate variance so it would not.

Todd Chernik explained to the applicant that coming forward he would have to consider that the current plan did not meet a side yard setback and that the side yard setback would need to be 25 feet otherwise he would need a separate variance for that as well. He said his advice would be for the applicant to get with staff tomorrow.

Vice Chair Sandy Jones asked if there was any further discussion.

Mike Tuller stated that staff wanted to address the issued raised by the public about what side of the road the multi-use trail would go on. He stated that on this section of Freemanville Road which is the high priority area for the Bike-Ped Committee the trail was being proposed on the western side of the roadway which he believed actually falls across from the applicant's property, so he would be safe in that respect.

There was no further discussion.

Motion and Second: Marcia Parsons made a motion concerning V08-013 that it be deferred to next month's meeting to allow the applicant more time to get more information together to bring back to the Board and so that he can also address the side yard issue through a variance or a different site plan. Seconded by Todd Chernik.

Vice Chair Sandy Jones stated she wanted to make a friendly amendment to that motion to add more specific detail and stated that the Board was looking to try to get a picture representation of the elevation showing what applicant's barn looks like and also a dimensional type site plan that did not have to be engineered, but just something to give

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more specific dimensions relative to the house, and where the existing shrubbery was located, what is and out of the right-of-way.

Applicant Robert Bohensky stated he had some information from National Barns showing some of their metal buildings. He stated they make some very nice barns and he would bring in those pictures when he returned.

Walt Rekuc seconded the friendly amendment.

There was no further discussion. Vote: 6-0. The motion for a friendly amended unanimously carried.

Vice Chair Sandy Jones asked if there was any discussion on the original motion.

There was none. The vice chair restated the original motion. Vote: 6-0. The motion unanimously carried to defer V08-013.

Vice Chair Sandy Jones stated that the Applicant for Vo8-008, Richard Ruthven, had arrived and that the Board had previously voted on a motion to defer this matter with the stipulation that they would go ahead and hear his case if the applicant arrived.

Staff Angela Rambeau re-presented Mr. Ruthven's Petition V08-008, requested a variance to the Board and stated the requested variance was to allow an accessory structure (a garage) to encroach into a side yard setback and stated the applicant was seeking relief under Article 5.1.3(c). She stated the HOA had no objections and that no specimen trees would be affected by the variance. Staff said should the Board approve the application, staff would recommend (1) Applicant should follow all applicable erosion control measures; (2) Obtain all required building permits.

Vice Chair Sandy Jones asked if there were any questions of staff.

There were no. The application came forward to present his case and apologized to the Board for being late to the meeting.

Applicant Richard Ruthven, 13480 Providence Lake Drive, Milton, GA stated that his request was to allow a garage on his property to encroach into a side yard. He told the Board the garage was part of a total renovation of a synthetic stucco home and there were trying to eliminate the synthetic stucco and increase the value of their home. He explained to the Board that in his neighborhood there were a number of single car garages with breezeways. He said since it was pre-Milton he did not know if those people obtained variances. He stated he was not trying to do anything that would devalue his property or that of his neighbors. He explained to the Board that one unusual circumstance for his detached garage is that the common northern property line, and that he was looking at a 12 foot timber retaining wall because the neighbor's drive to the north of his was approximately 12 ft. above his driveway and it was a shared retaining wall. Mr. Ruthven stated there were issues with that neighbor as far as his run-off as he did not control it and it goes straight through that wall and into his driveway. Mr. Ruthven said if his requested was granted it would impact not only himself but his neighbor in a positive way. He said he would be

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taking the stucco off and replacing it with hardy shingles and what is more like what was being built in the North Fulton areas now.

Applicant Richard Ruthven apologized again to the Board and thanked them for allowing him to proceed with presenting his case.

Walt Rekuc stated that was life and sometimes things happen. He said that is why they allowed for that in their motion. He asked applicant if he had approval of his adjoining neighbors and if Staff had those letters.

Applicant Richard Ruthven stated they were provided with his application. He explained to the Board that the HOA gave approval two years ago when the project was first started. He said he did not proceed at that time because of the nature of the construction industry then and the cost. He said in preparation for filing a variance with Fulton County, he got their standard letter from all the surrounding property owners. He said he did not want to deal with Fulton County because he built homes for ten years in Fulton County and was over dealing with them. He said he never applied for the variance then because of that, but he did use the letters he got from his neighbors and included those with his application.

Scott Kilgore asked the applicant if one of those approvals was for his closest neighbor.

Applicant Richard Ruthven stated yes and that he had spoken with that neighbor just yesterday. He asked me what I was planning on doing and we talked about it.

Scott Kilgore said that there looked like there was quite a bit of plant screening between applicant and his neighbor and if any of that had to be removed as part of the construction or would it stay.

Applicant Richard Ruthven stated no, that all of the vegetation was on the neighbor's property line. He said he did not know if his neighbor knew that, but that was another issue. He said that screening was great for both of them as far as privacy and that the garage would accentuate that. He said the only issue with those trees was if he does not control his water the whole thing would fall down and the trees would fall over, but that is not a topic of tonight. He said they have talked about that issue and would be resolved between them.

Todd Chernik asked applicant if part of his project would be to try to mitigate some of the water run-off with some type of recharge system.

Applicant Richard Ruthven stated he did not think it was his responsibility to handle his neighbor's water, but what he did not want to lose was his retaining wall because if his retaining wall goes, then the integrity of his neighbor's which holds up his driveway would be threatened. He said if he is allowed to put his garage in, he can trough his water. He said he has a little catch basin in the NW corner of his driveway. He said he would eliminate that and have a large flume type system installed that could handle all that water. He said if he and his neighbor came to an arrangement, then he could handle his water and that of his neighbor.

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Todd Chernik stated his concern to applicant if he built his structure and there was a failure with the wall, the ability to get in there and maintain and mitigate would be difficult.

Applicant Richard Ruthven stated the eastern wall of his garage which is what would be seen where the garage door is facing looking from the street, would be starting from the back of his house which was very close to where his neighbor's retaining wall stops. He said if it did collapse, it would collapse in front of the garage and there would be other issues but he would have access to fix it.

Vice Chair Sandy Jones asked if his extension would sit on his existing concrete driveway footprint.

Applicant Richard Ruthven stated it would not and that it starts at the back right corner of his house and going 15 feet into the easement and then going directly west following the existing garage wall. He said it was an extension but it starts at the back of his house.

Vice Chair Sandy Jones asked if applicant would have to cut into the shrubbery.

Applicant Richard Ruthven said not at all, as it was not on his property. He said he was requesting it stop at the 10 ft. barrier so that gives applicant 10 feet from wherever his planting was. He stated he did not want to lose the coverage because it gave both of them privacy.

Vice Chair Sandy Jones asked if there were any other questions for the applicant.

There were none.

Vice Chair Sandy Jones asked if there were any other comments.

There were none. She stated that public comment was closed.

There was no further discussion.

Motion and Second: Sandy Jones moved to approve Petition V08-008 and that the relief granted would be harmony or could be made in harmony with the general and purpose of the zoning ordinance and stipulate that with the following conditions: That all applicable erosion control measures be implemented and all required building permits be obtained. Todd Chernik seconded the motion. There was no discussion. Vote: 6-0. Motion unanimously carried.

ADJOURNMENT

Motion and Second: Sandy Jones made a motion to adjourn the meeting. Todd Chernik seconded the motion to adjourn. There was no discussion. Vote: 6-0. Motion unanimously carried.

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Meeting adjourned at 9:50 p.m.

Date Approved:

May 20, 2008

Francesca Ivie

Francesca Ivie
City Clerk's Office

Sandy Jones

Vice Chair, Sandy Jones
Board of Zoning Appeals