

**MINUTES**

**City of Milton Board of Zoning Appeals  
Regular Meeting  
May 20, 2008 7:00 PM**

**BOARD MEMBERS PRESENT:** Chair Sandy Jones  
Gary Willis  
Scott Kilgore  
Marcia Parsons  
Walt Rekuc  
John McRae

**BOARD MEMBERS ABSENT:** Todd Chernik

**CITY STAFF:** Angela Rambeau, Community Development  
Mike Tuller, Community Development  
Mark Law, City Arborist  
City Attorney Ken Jarrard

**AGENDA:**

1. Call to order and pledge
2. Approval of the February 2008 meeting minutes
3. Approval of the March and April 2008 meeting minutes
4. V08-006,12220 Birmingham Hwy., John Wieland Homes and Neighborhoods
5. V08-013, 15975 Freemanville Rd., Robert Bohensky
6. V08-014, 420 Majestic Cove, David and Julie Albano
7. V08-015, 15938 Manor Club Drive, Andre Hames
8. V08-016, 815 Tramore Place, Randy Fennema
9. Adjournment

**MEETING CALLED TO ORDER**

**Chair Sandy Jones** called the meeting to order.

**PLEDGE OF ALLEGIANCE**

**STATEMENT OF THE BYLAWS OF THE BOARD OF ZONING APPEAL**

Read by the Chair Sandy Jones.

**Chair Sandy Jones** called for approval of the February 2008 Board of Zoning Appeals meeting minutes.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Motion and Second:** Walt Rekuc moved to approve the February 2008 BZA meeting minutes. Gary Willis seconded the motion. There was no discussion. Vote: 5-0-1, with new board member John McRae abstaining. Motion carried.

**Motion and Second:** Sandy Jones moved to approve the March 2008 BZA meeting minutes. Marcia Parsons seconded the motion. There was no discussion. Vote: 5-0-1, with new board member John McRae abstaining. Motion carried.

**Motion and Second:** Sandy Jones moved to approve the April 2008 BZA meeting minutes. Walt Rekuc seconded the motion. There was no discussion. Vote: 5-0-1, with new board member John McRae abstaining. Motion carried.

**Chair Sandy Jones:** Introduced and welcomed new board member, John McRae, representative of District 6.

**VARIANCE REQUESTS**

**Chair Sandy Jones** called the first variance request.

**V08-006, 12220 Birmingham Highway, John Wieland Homes and Neighborhoods**

**Staff Mike Tuller:** Read the Petition and stated this variance request was for the following: 1. to allow a retaining wall to encroach in the 50' undisturbed stream bank buffer (City Code Chapter 14.6.5.i) and 2. To allow a retaining wall to encroach into the 75' impervious setback (City Code Chapter 14.6.5.ii).

Staff's Recommended Conditions if approved: 1) the detention pond wall shall be faced with brick or stone, per the Crabapple Crossroads Overlay; and 2) Develop a mitigation plan, per the recommendations from the City Arborist and site engineer to be approved by the Community Development Director.

**Applicant John Wieland, 3245 Nancy Creek Road, Atlanta, GA:**

Stated it was embarrassing to be at the meeting and apologized for the inconvenience to the Board and said they built their representation on getting things right and when they get things wrong it was painful. Stated they got things wrong or they would not be at the meeting. Reiterated the variance requests and stated there is an existing detention pond wall that their civil engineers made a mistake when building due to their lack of understanding streams and as a result a part of the wall is out of the buffer and the other end is out of the buffer and the stream meanders, but the wall does not meander so there is 2600 sq. ft. buffer actually behind the wall that should be in front of the wall. Said that clearly the job was not supervised and apologized to the board and the city for that. Mr. Wieland then introduced Dan Fields, the Vice President of John Wieland Homes, to present the details for the application.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant Dan Fields, 1950 Sullivan Road, Atlanta, GA:**

Presented a summary of some of the details. Stated that Braeburn was zoned on July 5, 2006 by Fulton County. At the request of neighbors and as a zoning condition, the amenity site which was planned for the current detention pond location was relocated to another location in the NW corner of the property. Said the detention pond wall was permitted in November of 2006 and the wall was completed in the fall of 2007. Mr. Fields said that in November of 2007, the encroachment area was identified to be about 1/16 of an acre and John Wieland Homes was contacted in regards to the infringement on the stream buffer. He said the wall has been built and had been approved without brick. He stated that they submitted documents to the Board last week containing an email from Mr. Wilcox and some other people at Fulton County confirming that it was approved by the county as constructed. Mr. Fields asked for approval of the variance that had mitigation measures going along with any approval to offset the effects of the encroachment or infringement. He stated they were prepared to present mitigation measures that would more than offset any impact of the wall.

**Applicant Dan Fields:**

Mr. Fields went through his PowerPoint presentation with the Board referencing the diagram that was approved by Fulton County. He said if they did not get a variance they would have to go in and notch the wall that encroaches into the stream buffer, and cut it out and move the wall back and that action would increase the wall by 4 feet. He stated they talked with Staff when they learned of the violation and obtained the names of some engineers that could evaluate the wall replacement or relocation and also to look at the streams and how they might be able to mitigate the violation. Mr. Fields stated that Mark Nelson was the name that continued to come up who was with Register Nelson, as being the best engineer. Mr. Nelson was called and asked to come out to evaluate the stream and wall and give his best mitigation advice. Mr. Nelson told them that moving the wall would cause more destruction to the creek and to the downstream eco system. Mr. Fields represented that they had sent to the Board both letters they received from Mark Nelson. He discussed possibility of a recompense area, and stated the area currently to the north of the property on the other side of the creek could be timbered and used as a park or tennis court for the community later on. He stated they could record a covenant that would forever allow the use of the property for a conservation easement area. He stated that in addition, they could brick the wall that runs along the back of the property. He indicated that the wall came before the DRB and was approved without the brick, but they could as part of the mitigation element, brick that wall on the outside facing the neighbors' property.

**John McRae:**

Asked if they had a landscape plan.

**Applicant Dan Fields:**

Stated they would also supplement the tree plan that has been submitted and approved by staff. He told the board that John Wieland Homes is willing to do over-planting of the riparian areas and also provide coir logs to help establish the stream banks and adopt a planting plan that was recommended by Register Nelson.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Asked about the reference to the stream meandering or changing location and if there was no site surveyor, how they came to that conclusion.

**Applicant Dan Fields:**

Stated after being notified by Staff of the violation, they had a surveyor go out and survey the property to confirm the creek was meandering and identify the exact encroachment.

**Walt Rekuc:**

Asked Mr. Fields to identify on the PowerPoint presentation where the coir log location would be in relationship to the wall and whether it would be on their property or on someone else's property and if there were any pictures.

**Applicant Dan Fields:**

Stated it would be downstream due to concerns of some of the owners downstream that there were some stream banks that are eroding that are not necessarily because of the location of the wall, but because of upstream development. Referenced from PowerPoint presentation the location and stated it was downstream between them and the Six Hills Lake.

**Applicant John Wieland:**

Said it was a good question. He said most of their water goes to the pond in question and then the detention pond retains and gradually discharges at a slower rate and that goes into the stream on the Anderson property and that stream feeds the Six Hills Lake. He said subject to the property owners' agreement, they would do remediation in the stream bank. He said the wall did not cause any problems with the stream. He stated in Register Nelson's letter it explains what happened because of the meandering, but stated there were things that could be done to help and they were willing to do those things.

**Walt Rekuc:**

Stated provided the property owners agree to allow them to come onto their property.

**Applicant Dan Fields:**

Reviewed with Board from his PowerPoint presentation the areas along stream they were willing to put in the coir logs, and indicated that the two involved parcels would be the properties owned by Mr. Jeff Kish and Mr. Bill Anderson, and that is where the coir logs would be located.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Asked if there was a physical planting plan that accompanied the request. Want to make certain if something is changed Mark Law has the opportunity to review those changes.

**City Arborist Mark Law:**

Stated there was a landscape plan that may need just a few revisions regarding types of acceptable plant material, but for the most part it was acceptable. Mr. Law said they would have to come to him for final approval.

**Gary Willis:**

Asked if there was anyway to screen the wall so it would not be visible at all from the neighbors.

**Applicant John Wieland:**

Stated there really no way to totally screen because you can see in between the branches. He said they could perhaps plant vines on the wall and over time the trees will fill in and the adjacent property owners have asked for some indigenous vegetation in addition to the evergreens that are commonly used.

**John McRae:**

Asked if the stacked stone would appear on the visible surface.

**Dan Fields:**

Stated it would be brick, not stacked stone.

**Walt Rekuc:**

Asked what color brick were they looking to use.

**Dan Fields:**

Stated they have offered three brick stones to the adjacent owners and were awaiting a response as to which they liked. It is one that would blend with the landscape and the mortar would be some type of earth tone color and the brick would be as well.

**John McRae**

Asked if they would consider some type of cultured stone finish.

**Dan Fields:**

Stated they would.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Asked Mr. Fields about a letter in their packet from him dated March 14th stating that *all stormwater devices other areas shall be maintained by a mandatory homeowners' association whose proposed documents of incorporation shall be submitted to the city staff for review and approval prior to the recording of the first final plat.* Asked if future maintenance would be provided by the development's homeowner association and what the maintenance cost burden might be.

**Dan Fields:**

Stated that was correct and that there is a maintenance outline that is provided by the state out of the Stormwater Manual Bluebook.

**Chair Sandy Jones:**

Asked if there was any discussion about any type of a maintenance bond for them to address any issues that arise due to the mitigation.

**Dan Fields:**

Stated there have not been any discussions regarding this yet.

**Walt Rekuc:**

Stated that on a prior case that the board was concerned about a wall falling and would they be going back in to fix it, and also whether they would not be putting this on the homeowners' association to maintaining and up-keeping the detention pond and also make sure they had insurance to make sure that this would be specifically covered.

**Dan Fields:**

Stated that was correct and it would be covered under the association's policy.

**John Wieland**

Stated he wanted to state again that if the wall has to be moved, then it gets higher and becomes more visible.

**Sandy Jones:**

Asked if there were any additional questions for the applicants. There were none. Ms. Jones opened up the meeting for public comment.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**PUBLIC COMMENT:**

**Jeff Kish, 545 Kensington Farms Drive, Milton, GA: (Spoke in Opposition)**

Stated he was an adjacent property owner and was there to state his opposition to the buffer variance requests. Stated John Wieland Homes were aware of the Crabapple Overlay and they chose to ignore it and not abide by it since Fulton County permitted it. This act has violated many city ordinances as well as state and Corp of Engineer requirements. Stop work orders have been issued by the city for erosion control and the Corp of Engineers have issued a cease and desist order. He stated that this decision has created environmental risks and additional disturbance to the buffer. He stated The extreme topography they stated was created by John Wieland Homes as they took what was once heavily wooded property, cut all the trees, cleared all the brush and filled in the property with 45 feet of fill dirt to create the flat land that now exists. He stated that they had no concerns regarding the other existing wall height regarding visibility. In violating the buffer, they have compromised all of the benefits to which they refer and the hardship referred to is the one created by John Wieland Homes, to himself and the community and the City of Milton. He stated they have been attempting to work with them along with the other adjoining property owners, but there has been no success as of this time. He asked the board to deny the variance requests and said this would set a precedent in this city that these types of infractions cannot occur in the City of Milton and also showing support for the efforts of those affected by this problem.

**Walt Rekuc:**

Complemented Mr. Kish on the beauty of his home and asked if he was the builder.

**Mr. Jeff Kish:**

Stated he was the builder and followed all the rules and regulations in positioning the home where it is and adhered to all the Fulton County regulations to remain out of the stream buffers and it was built in 1991.

**Walt Rekuc:**

Stated this was well before stream buffer ordinances were in effect. Asked Mr. Kish how close to the property line he was himself.

**Mr. Jeff Kish:**

Stated the rear property was approximately 70 feet from the back of his house to the back of his property. He said he had some discussions with John Wieland Homes about placing of the coir logs and their contingencies, but have not seen anything to show truly good faith. Does not appear they understand the impact that they have had on his property. There has been significant new erosion and for 16 years they did not see the erosion and vast amounts of water traveling thru both streams. There is no vegetation to help hold back the water with them stripping the land. Stated he did not believe any part of the wall that parallels the creek is outside of the 75 ft. impervious zone. They are only talking about the 50 ft. no disturbed zone. Mr. Kish said you cannot cover up an 18 ft. high wall.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Said he totally understood Mr. Kish's his position and was not trying to defend John Wieland's position but just want to make sure he understood his points of view and see what they can do or cannot do. Asked Mr. Kish about the type of bricks proposed and if he had looked at the samples.

**Mr. Jeff Kish:**

Stated they had looked at them, but part of the other consideration is the 18 ft. height with 45 ft. of fill dirt behind that and that is where the basement level of the homes start and then go up three stories. He said he understood that all they are dealing with is the wall.

**Walt Rekuc:**

Said that was correct and he was sorry about the zoning, but they can only address the wall issue. He asked Mr. Kish again if he was correct in that they had not chosen a brick or stone and had not chosen a mortar.

**Mr. Jeff Kish:**

Stated that was correct.

**Walt Rekuc:**

Stated it appeared Mr. Kish's property was the most affected and suggested he should probably want to be more involved in those decisions.

**Scott Kilgore:**

Said he wanted to clarify with staff that if this was denied that the wall and footings would have to be torn out and the wall would have to be moved back 7 feet. The wall would be rebuilt and then be higher that appeared to him to be more of an impact to his property as far as visibility. Asked Mr. Kish if that was what he was seeking.

**Mr. Jeff Kish:**

Stated he was asking that they be held to a standard because so far because of Fulton County passing this on to us the way it is, they were held to essentially no standard. The Crabapple Coalition spent thousands of hours to help create the Crabapple Overlay and this has been totally disregarded in this process. He wants them to be held to some standard and they take some responsibility. They would still have to landscape and still would have to put brick or stone on it. They are essentially saying they are not going to admit fault, but there is a lot of erosion down there and are willing to take care of it. He said the footers under his bridge are significantly eroding and who will be responsible over the years.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Gary Willis:**

Wanted the question about moving the wall as an option to be clarified as asked by Scott Kilgore and if that is what he wanted them to do.

**Mr. Jeff Kish:**

Said yes if that was the only option he had.

**Scott Kilgore**

Stated they had to talk to staff about the impervious surface on the top of the wall.

**John McRae:**

Asked Mr. Kish what he meant regarding a 3 ft. natural swell he referenced in his letter to them.

**Mr. Jeff Kish:**

Staff had mentioned that there was a possibility that two sets of plans existed for this that were approved on the same day by Fulton County and there exists the possibility of more sets of plans. They chose the set of plans that showed a 18 ft. high wall and the other set of plans showed a 3 ft. natural swell that would allow a sheeting of the water off and would be more compliant with the 2005 subdivision regulations for Fulton County that were also approved.

**John McRae:**

Asked applicant if that was correct and were there different variations of the plans that were submitted and approved.

**Applicant Dan Fields**

Stated that was correct. He said he only knew of two revisions that are being discussed tonight.

**John McRae:**

Asked Mr. Kish if there was anything short of relocation that would satisfy him, and if any of the remediation would interest him.

**Mr. Jeff Kish:**

Stated he would hate to save never. Stated Mr. Wieland was involved with the Crabapple Coalition and had full knowledge of what the community expected. It appears they feel they can do whatever they want to.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**John McRae:**

Said he would not want him to speak for his neighbors, but did he feel his opinion was the majority opinion among the existing homeowners.

**Mr. Jeff Kish:**

Stated yes in light of everything that had gone on. They all expected changes with the creation of the City of Milton, and that they would have some control over what happens in their city.

**Chair Sandy Jones:**

Stated if the application is denied and the wall has to be moved, the erosion concerns would not be mitigated and wanted to make sure he understood that. Also for clarification asked what discussions had taken place about addressing some of these issues.

**Mr. Jeff Kish:**

Stated there were several meetings with them over a number of weeks. Mr. Wieland and his staff came and looked at the properties and admitted there were some problems and then proposed they would fix these things by doing what they were already required to do. Said moving the wall will not fix the erosion problems or other problems. He said he was not sure the coir logs would fix it either. The site suggests there were numerous things in addition to this wall that should have and need to be addressed.

**Gary Willis:**

Reiterated that all this Board can deal with is the matter before them tonight. Said he understood his concerns, but they can only deal with the one issue.

**Chair Sandy Jones:**

Asked if there was additional public comment.

**William Anderson, 565 Kensington Farms Drive, Milton, GA: (Spoke in Opposition)**

Stated he was one of the adjacent property owners to the Kish's property and is affected by the Wieland development in that the stream that has its origins back near the SW corner of the Baptist church property was through the Wieland property and now is retained behind the wall which is currently under an Army Corp of Engineers cease and desist order. He said that this stream joins other streams and flows through Kensington Farms and through his property onto the adjacent property owned by Jeff and Ellen Kish. He said the stream had changed after the arrival of the Wieland development with its unconscionable clear-cutting and re-grading of the property. He said they are now experiencing both a greater velocity and volume of water coming down the stream. He stated the end result for his property is the silting and undercutting of the stream bank and loss of trees toppling into the stream.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

He said there was further damage had occurred to the downstream property owners. Stated he had a tentative agreement with John Wieland for the repair and remediation of the stream bank with goal of preventing further loss of trees. Concern going forward for all developers including John Wieland is they follow to the letter both the NW Fulton Overlay plan as well as the associated Crabapple Plan regardless of what was approved by Fulton County during the Milton transition. He asked that the BZA do the right thing and require Mr. Wieland and his staff to do the right things for Crabapple and the City of Milton.

**Mr. Anderson passed out photographs of the damage to his property.**

**Gary Willis:**

Asked Mr. Anderson what he considered the right things and what he would like to see done.

**Mr. Anderson:**

Stated his wife sits on the Crabapple Coalition and that she had met with Mr. Wieland prior to any of the development and the entire Crabapple Overlay plan was thoroughly explained to him and to some of his staff. They then came in and completely ignored all of the provisions of the Crabapple Plan. He said that coming in and clear-cutting 60 acres is not consistent with anything the City of Milton would desire and yet as we were transitioning from Fulton County to Milton, this plan was approved. He thought the date was actually November 6th and questioned whether a coincidence or not. He said the end result has been a total destruction of probably the most prime piece of vacant land that was left in the Crabapple area.

**Walt Rekuc:**

Stated a lot of things he cannot fix and he wants to work with the community the best he can. He said he can say move the wall, go do this and that, but nothing gets done to help do any kind of mitigation or provide relief for the neighbors. He said he was trying to figure out how to best mitigate some of these issues. Related that he personally had a 40 ft. tree fall on his creek and because of some of the forceful storms, he has also lost some trees on his creek. He said sometimes it is just nature, but they are trying to do something.

**Mr. Anderson:**

Stated the only reason they offered to do anything is because they were in trouble due to their being hit with a stop work order. They have repeatedly violated most of the Crabapple Plan principles and now are coming head in hand asking for forgiveness with a mediation plan.

**Walt Rekuc:**

Stated he wanted to come up with a solution that was workable and amenable because everyone involved will be neighbors somehow and some way.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Mr. Anderson:**

Stated all three parties involved that have met with Mr. Wieland and his staff have all stated clearly what they expect for that area. Said he is satisfied with the stream remediation project and also satisfied that the retaining wall which is separate from the other wall but faces his property as they have agreed to face it. He said he and the neighbors stand united and they need to resolve the issues with all of the neighbors or there will be no agreement.

**Chair Sandy Jones:**

Asked for clarification if he was stating his agreement with conditional with John Wieland Homes reaching agreements with the other impacted residents.

**Mr. Anderson:**

Stated that was correct.

**Chair Sandy Jones:**

Asked if there were any other questions from the Board. There were none. She then asked if there were any other public comments.

**Bill Ruffin, 210 Six Hills Lane, Milton, GA: (Spoke in Opposition).**

Stated he represented the property owners that were adjacent to the lake at Six Hills. He said since the clear-cutting and establishment of the detention system every time there is a prolonged heavy rain their fresh water lake turns a nasty color brown. Stated he had sent the Board photos showing this. He said they feel they have become John Wieland's retention pond as it is detained on his property, flows into their lake and stays there. He said they have been complaining about this for over a year and a half and the only action they had seen is what has been mandated by the city in response to the fines. When they decided to go for the variance, they then reached out and said they wanted to talk and we agreed. He stated they asked for 3 things. A specific plan to stop the pollution of the lake, have them accept their fair share of the cost of dredging the lake and asked for some protection in the future when they move on to their next project and if those projects would affect their lake. There has not been an agreement so far. He said he was encouraged by some of the things he saw in the mitigation plan but basically regarding repairs to the stream bank but not sure about the turbidity curtain as they do not know what it looks like. They do not know if the \$10,000 figure they have offered is a fair amount or just a drop in the bucket, as they have been quoted \$100,000. Another issue is the amount of dirt and how much of it is Wieland dirt. He said they need to have a study done, as some of the dirt coming down their property is coming from Williamscraft development and it is filthy and it flows onto to Wieland's property and they do not know what they are doing about Williamscraft.

**Scott Kilgore:**

Asked if they were pursuing a study to determine the amount of silt in the lake and what it would actually cost to remove it. He asked if he had a time frame on when the study might be done, as one of their options could be to defer this matter until that is done.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Mr. Ruffin:**

Stated they were told around 6500-7500 cubic ft. or yards. The \$10,000 would probably take care of about 1000 of that. They do not know how much silt is currently in there or where it came from. They can tell when the study is done how long the dirt has been there by the color. He stated he believed it could be done as soon as possible and they had already talked to a dredging company that has been out to see the site.

**Scott Kilgore:**

Stated he would like to have some sound scientific engineering numbers as there was quite a range in \$10,000-\$100,000.

**Mr. Ruffin:**

Stated he felt comfortable with the \$100,000 amount as they had 3-4 companies come out and they all said around the same amount.

**Walt Rekuc:**

Said there are some new pumping and dredging techniques that does not involve a lot of equipment that is very environmentally friendly. It was a greatly reduced cost to him when he has also been in that same situation.

**Mr. Ruffin:**

Stated one of their concerns is the lake is full of various wildlife and they do not want to dredge the lake dry and kill all the wildlife. The biggest problem is there is so much dirt in there and it has to be put someplace. He stated he had some property adjacent to the lake and part of it is swamp and if the environmental authorities were okay with it, he had no problem putting a lot of it there.

**Walt Rekuc:**

Asked if the lake was owned by the Soil Water Conservation District and if there was an easement around that lake.

**Mr. Ruffin:**

Stated no, it is owned by 5 property owners which deeded it to us. There is an easement to a drain at the end of it but that is it.

**Walt Rekuc:**

Is there a Six Hills Lake Owners' Association?

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Mr. Ruffin:**

There is no association, just the 5 people that own the lake. He said we just became involved because we had to because this beautiful lake we love turns a dark orange and stays that way for weeks at a time. He said there had been some site work done and they had gotten through a couple of rains and the lake looked good, but there has not been a prolonged rain like March 19th and that may be the day their system failed.

**Kim Horne, 415 Wade Glen Court, Milton, GA: (Spoke in Opposition)**

[8:24:10- 8:28:34] Comments not entered into record, as did not turn in at meeting or bring by City hall her Public Comment Card.

**Chair Sandy Jones:**

Asked for clarification regarding the cease and desist order referenced during this meeting, and whether it was pertaining to the wall in question that they were addressing.

**Staff Angela Rambeau:**

Stated it was written in reference to the other wall but it does cover work on the entire project.

**Marcia Parsons:**

Stated she did not believe they had seen a letter from the EPD.

- Remaining board members stated they did not have a copy from Staff of the May 5th letter.
- City Attorney provided a copy that the Board passed around for review.

**Chair Sandy Jones:**

Asked if there were any additional questions or further public comment. There were none. Asked if the applicant wanted to rebut.

**Applicant John Wieland:**

Said the other wall is entirely a different wall on the other side of the property and they had met with the Corp and the EPD. He said the wall was permitted properly by Fulton County and they are taking this matter very seriously. He said it has no relationship to the wall that relates to the variance and the letter does not reference in anyway the wall that is the subject of this variance. He said their mitigation budget was actually \$200,000 so it was not like they stepped over the line and were getting off totally free. The actual figure discussed by Mr. Ruffin is 4896 cubic yards of silt. He said he has on a CD satellite pictures from 2002 and 2004 when the high school was being built that shows the Six Hills Lake silted out and totally brown long before they did anything. They also have pictures from the rain events of May 12th and May 15th that show the lake in beautiful shape. Mr. Wieland stated if he were

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

Mr. Kish he would feel exactly the same way. He said he chose to push the house to the back of the lot to facilitate his septic tank system. He said that he also tried to buy two acres of land from the adjacent property owner and was well aware that his house was right up against the back line. Mr. Wieland said we do not like the word, but the word is *urbanization*. He stated he wished they had not bought this property because it appears he has caused agony for so many people and he apologized because is not want he does in his life. He continued to say they bought it, had it zoned and worked with representatives from Crabapple and representatives from Fulton County and he said he really take offense to the quote *blatant disregard for the rules*, as that is not correct. He said they operated under the rules that were established when they bought the property and that was Fulton County. He said he has difficulty in believing that Mr. Kish wants them to build a new wall that is 4 feet taller and to take out all of the existing vegetation that would be required to do that. He stated he understands that he is unhappy. He read a quote from Register Nelson's report, *once urbanization occurs in the watershed however there is usually a high degree of degradation that could be expected that is highly attributable to any one site*. He went on to say that they are dealing with a natural process here and they are trying to spend this money to mitigate this matter as much as possible which he felt is what the Board would want them to do and what the homeowners would want them to do if they could just relax a little. He said they appreciated all the time involved over this matter and they understood they are in the City of Milton now and will try to work effectively with the city.

**Chair Sandy Jones:**

Asked if there were any further questions for the applicant.

**Walt Rekuc:**

Stated he was a city engineer for the City of Roswell for many years. He told Mr. Wieland that one of his projects they approved was next to the Chattahoochee Nature Center as well as the High Meadow project, Inverness, and that was before erosion control was even considered required. He told the Board that Mr. Wieland went in and put hay bales and rock berms and a number of things that were not even required at that time to help mitigate and keep mud and silt and debris from getting on either of those two properties. He said we are not all perfect in all cases. He asked Mr. Wieland about the mitigation plan he was proposing and it showed a proposed recompense area. He stated he did not think the area shown in the inner loop would do much good for anybody along the outskirts of this project. He asked Mr. Wieland if he knew how much area that was in square footage or acreage.

PowerPoint slide was pulled up for referencing with Mr. Wieland.

**Applicant John Wieland:**

Stated about 10,000-15,000 square feet.

**Walt Rekuc:**

Asked if they would be willing to do the brick or cultured stone on both of the two walls.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant John Wieland:**

Stated they perform to use brick because stone of any kind would fade, but with brick and dense plantings in front, it will not go away, but in time you will not see it.

**Chair Sandy Jones:**

Asked if there were any more comments or questions for staff or any other public comment. There being none, public hearing was closed.

**Walt Rekuc:**

Said it sounded from the Corp of Engineer letter that it was an investigation letter and asked if he was reading that correctly. He stated it did not sound like they were implying there was a problem, but asking for information to determine if there is a problem.

**City Engineer Carl Lucas:**

Stated that was correct. He said the only meetings they have had with the Corp of Engineers have been investigative meetings on their behalf.

**Scott Kilgore:**

Had a question for the City Attorney and said obviously what the Board was faced with tonight was either approved with conditions which gives the Board some leverage or a denial which basically gives no conditions. He stated his concerns are enforcement of standards. He said that the citizens expect the standards to be upheld and hold people accountable. He then asked the City Attorney if the Board had the authority to impose a monetary penalty as a condition of approval. He said if the Board denies it, yes the standard would be upheld but the result may perhaps worse than leaving things alone. He stated if the Board approved it they were talking about a lot of mitigation and they mentioned a \$200,000 budget, but he preferred that a monetary penalty be placed as a condition but did not know if that was legal.

**City Attorney Ken Jarrard:**

Stated that with respect to the Board granting a variance, he reiterated as the Chair read in the opening of the meeting, the Board of Zoning Appeals is a quasi legal body which means that the Board has a set of rules and regulations that have been adopted for you by the Council and then the Board applies them. He said that those rules and regulations did not give them the power he was speaking about and that the Board is constrained by the perimeters that the Council has set. He stated that imposing fines is not one of the criteria.

**Scott Kilgore:**

Asked if it specifically prohibited them from imposing fines. He stated he had heard the City Attorney say in the past that if the rules and regulations are silent on something that they would be okay with it. He said that they had a great deal of latitude with conditions. He again asked if a monetary penalty could be one of those conditions.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**City Attorney Ken Jarrard:**

Stated that his advice has been historically and he hoped he had said that to them before, but he believed the conditions attached to a grant of a variance are those conditions that are necessary to mitigate or ameliorate the impact of the variance within the criteria set forth in the code and respectfully he did not believe imposing a fine would be one of the things the Board would be authorized to do.

**Vice Chair Sandy Jones:**

Stated as a follow-up question to this matter, similar to how there is wetlands mitigation and wetland mitigation for banks, would there be anything like that within their purview within the City of Milton as far as stream bank restoration.

**City Attorney Ken Jarrard:**

Stated that the entire variance code anticipates that so they would need to present some sort of mitigation plan and he believed they had a lot more flexibility with respect to that. He said that he believed it would take the form of either a tender of a mitigation plan from the applicant or a recommendation from staff. He said that would be something they could explore further and they did have latitude on that issue. He stated the Board would either need give staff direction and defer your final decision until such time as you receive recommendation from staff on a mitigation plan that the Board could then consider and then you would open it up at the next meeting not for public hearing, but to announce your decision.

**Vice Chair Sandy Jones:**

Stated that while Fulton County did permit the project, the overlay standards of the Crabapple Overlay were valid but were not incorporated by Fulton County. She asked that since those conditions were present and should have been included, did the Board have latitude to be able to include those conditions as part of their condition.

**City Attorney Ken Jarrard:**

Said that to the extent they were related to the relief that the Board may or may not grant, but if the Board granted the variance, he believed that would be the sort of thing they could add by way of a condition.

**Vice Chair Sandy Jones:**

Asked City Inspector, Jimmy Sanders, with regard to runoff, there was another development that had been mentioned just up from the Wieland development and asked if the city was doing anything to try to determine what impact is being caused by that development versus what impact is being caused by the Wieland development to see if there are any issues that need to be addressed regarding that development?

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**City Inspector Jimmy Sanders:**

Stated that there has been enforcement action taken, a stop work order issued and considerable amounts of erosion control activities there as well that the city has been inspecting as well.

**Scott Kilgore:**

Asked Jimmy Sanders about moving the wall back 7 feet to get it out of the buffer. He stated he heard this would do addition damage to the stream and asked him if that was the city staff's position as well. He also asked if long-term would the stream be a significant healthier stream by moving the wall to where it should have been built in the first place.

**City Inspector Jimmy Sanders:**

Stated the wall could not be moved without re-disturbing the undisturbed buffer, so it would, in fact, require a greater disturbance to remove it than it did to install it.

**City Inspector Jimmy Sanders:**

Stated that the mitigation proposed has to be equal to or greater than what the impacts were. If we believe that the mitigation plan was equal to or greater than the impact to the buffer, then the city would have to say moving the wall without the mitigation would not create any benefit than what we would get with a mitigation plan.

**Scott Kilgore:**

Said then no additional benefit to the stream.

**Walt Rekuc:**

Asked Jimmy Sanders about the other project and what the size was in relationship to this project.

**City Inspector Jimmy Sanders:**

Stated the total area was nearly as large.

**Walt Rekuc:**

Asked if the disturbed area was about the same as well.

**City Inspector Jimmy Sanders:**

Said that currently the area that was disturbed on that side with all the buildings there was probably 25%-30% built out in some areas and some areas are nearly completely built out. He said some areas are currently under development, the commercial front part of it, and the other areas where no activities are going on, they had to be re-seeded.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Asked Jimmy Sanders if he had ever been involved with the determination of silt in a lake and would they be able to determine soil types with them being so close together. He said he had gone to look at the lake and it appeared that either the stream had been cleaning itself or something had been going on because it did not look that silty perhaps from the storms that we have had recently.

**City Inspector Jimmy Sanders:**

Stated he had been involved with that in the past and since they have a direct connect from both projects, he was not sure they could separate the two once they got to the lake. He stated that because of the type of soil the turbidities would be expected to be high from both locations but probably higher from Crabapple Crossroads because those soils are redder, but the bed load sediment they believe are pretty well contained on both sides. He said when they go out to inspect if they see something that needs to be fixed, they address those things when they see them.

**Scott Kilgore:**

Stated there were two variances being sought. One to encroach into the 50 ft. undisturbed buffer and the other is the 75 ft. impervious setback. He said they had been hearing about the 7 foot number tossed around, but in order to be out of the impervious setback, they would need to come back significantly further as he understood it.

**City Inspector Jimmy Sanders:**

Stated that was true and to keep in mind that the approved Fulton County plan showed the wall outside of the 50 ft. undisturbed buffer due to probably a surveyor and it also showed that it was approved in the 75 ft. impervious setback. He said that was approved by Fulton County. He said the reason that is part of the current request is because he felt it was necessary to actually address that issue while the buffer issue was being address because it is sort of connected even though the impervious buffer was approved by the county clearly on that plan.

**Scott Kilgore:**

Said he understood that, but it was before them tonight and if both of these were denied, they would have to move the wall all the way out of the 75 feet so it is a good bit further than 7 feet. He said if they were to deny both of these would there still be mitigation required of them by the city based on what is before the Board right now right now or if the Board denies it and they move the wall but they do not have to do any of the mitigation talked about tonight, would that be a true statement?

**City Inspector Jimmy Sanders:**

Stated that they would only have to do what would meet the minimum requirements at that point. There would be a redesign and re-approval of the hydrology and the new design for

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

the wall, but he did not see how the city could affect any conditions for the downstream property.

**John McRae:**

Asked if the development that was referenced further upstream was within Milton and if they had been hit by any violations or stop work orders.

**City Inspector Jimmy Sanders:**

Stated they had.

**John McRae:**

Asked if there was anything that would relate to this case in terms of soil being deposited into the water flow.

**City Inspector Jimmy Sanders:**

Stated the enforcement action that was taken against that project were concurrent with the ones taken with the current site. He said back in March was when the city issued the notices of violation and stop work order on that site as well. He said the inspector felt they had addressed the erosion control issues and repaired the silt fences and installed additional seed and mulch and fertilizer and the grass is coming up as it is on the Wieland site.

**Marcia Parsons:**

Told Mr. Sanders that he had four items listed in his recommendation and if this matter got approved and asked if those four things were addressed in the current Wieland plan.

**City Inspector Jimmy Sanders:**

The conservation areas, the stream restoration, additional plantings. He said it was also his understanding that there was also for the three lots adjacent to the detention facility, that they will install systems that catch the water from the downspouts and that the water would be reused and will not go into the system. He said he believed that was part of their mitigation plan.

**Scott Kilgore:**

Asked Mr. Sanders if they had to come back 7 ft. to be out of the impervious setback, they have said that the wall would end up being 4 ft. higher, so if they denied both of these, then as he understood it, they would have to come back an additional 25 ft. and very crude math says that the wall would then be 12 ft. higher, is that correct, is it linear and does the wall get higher the farther you come back from the stream and would it be a similar slope?

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**City Inspector Jimmy Sanders:**

Stated he did not believe in their calculations they allowed for moving the wall entirely out of the impervious setback more than 4 feet.

**Scott Kilgore:**

Said if the Board denied both of these they would have to because of item 2 is to encroach into the 75 ft. impervious. If that is denied, they cannot encroach into the 75 ft. impervious and they would have to come back that other 25 feet.

**City Inspector Jimmy Sanders:**

Said if you are required to be outside of the impervious setback, it would have to go back outside of the impervious setback, 25 ft. plus the 7 ft.

**Engineer Carter Lucas:**

Stated he did not think it was necessarily a linear calculation because you are talking about a volume so the volume that you would be removing from the buffer would have to be replaced somewhere in that pond and so it would depend on the configuration of the pond and how the hydrology works. He said if somehow the pond got bigger the elevation of the wall would change.

**Marcia Parsons:**

Asked the City Attorney regarding item 2 for the variance request, since that was approved by Fulton County, if it is denied does that approval become null and void.

**City Attorney Ken Jarrard:**

Said he was not sure he understood the question. He thought it was just permitted improperly, but no variance was granted. It would not be null and void, as that is the relief that is being sought right now and if the variance was granted, then that improper permitting is made proper again by the granting of the variance. He said that if the variance is denied, then action will have to be taken to make sure that there is compliance with Milton rules.

**Chair Sandy Jones:**

Asked if the Board members had any additional comments or questions for staff. There were none and she called for a motion.

**Walt Rekuc:**

Stated he would like to make a motion.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Motion and Second:** Walt Rekuc made a motion for conditional approval of the variance based on the hardship of rebuilding the wall and the impact that the new wall would have on the stream itself. Those conditions are:

- (1) place 270,000 square area of recompense in a protective easement to the Braeburn Homeowners' Association to require this area to be left undisturbed as per the applicant's plan;
- (2) to place brick on the total downstream face of both retaining walls with the discussion of the type of brick to be left up to the City of Milton's Community Development Director;
- (3) supplement a tree and mitigation planting plan of disturbed area per the City Arborist's approval beside the detention pond walls;
- (4) install a coir log toe protection on Mr. Kish's and Mr. Anderson's property to stabilize the stream based on Register Nelson's Stream Quarter Planting Plan if the homeowners allow;
- (5) plant Indian grass or similar plantings inside the detention pond to help with the establishment of a buffer area within the pond;
- (6) make a payment of \$15,000 for the removal of silt off of the lake to the Six Hills Property Owners' Association;
- (7) to install a turbidity screen at the stream inlet to the Six Hills Lake just downstream from the property if the homeowners allow and
- (8) place and maintain tree save fence and B & P's beside the wall that will have brick or stone placed on them and outside of the recompense planting area.

Seconded by Gary Willis.

Discussion:

**John McRae:**

Had one change he would like to make to the motion, and that change is to have the amount to be paid to the Six Hills Property Owners' Association to be \$50,000.

Seconded by Scott Kilgore.

Discussion:

**Chair Sandy Jones:**

Stated he felt one of the things they did not have is a complete understanding of what we have within our jurisdiction. She said we had gotten some clarification from the City Attorney as far as that the Board can hold the Crabapple Overlay standards as a condition to approval of the variance and also that staff can explore and there is a path forward as far as looking as recompense options for future stream bank restoration. She said she did not feel she had all the information at this time to make an informative decision because for her there are still some areas that she has questions on and that need some clarification. The Crabapple Overlay standards are a significant part that she would like to look into and determine what would be applicable because this is a visible and kind of a corner stop to that community.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Scott Kilgore:**

Stated he would second those notions. He said he believes this is a big decision and thought it does carry precedent in terms of needing to make a statement on behalf of the City of Milton and the citizens of Milton. He said he was uncomfortable with trying to craft a comprehensive motion at this time. He said he also had a question for the City Attorney. He asked if it was correct that a motion can be made at this time to defer and that would trump other motions on the floor.

**City Attorney Ken Jarrard:**

Stated a motion to defer or to postpone is of a higher priority than a main motion on the merits. That is correct.

**Scott Kilgore:**

Stated perhaps he needed to get a feel from the other board members before making a motion, but he was leaning at this point is to not rush as it is a big and important decision to make the right decision and not to rush.

**Marcia Parsons:**

Said her question to Scott is under the variance, what perimeters do they have other than the variance and the wall that is part of the Crabapple Overlay and where is the deficiency in what they are looking at?

**Scott Kilgore:**

Stated that was another reason he wanted to consider it further, as he wants to make sure they are clear. Even on the main motion that was made, there was reference to a hardship based on having to rebuild the wall and he is not sure that is one of their criteria for a hardship and believes the Board should discuss it further. Said this is a lot to try to craft a final motion right here and now.

**Marcia Parsons:**

Said that was her question, as to this particular variance, what part of the Crabapple Overlay does this Board have jurisdiction over now with this variance.

**Chair Sandy Jones:**

Said building materials on the wall facing was one component. She said she was not completely familiar with the Crabapple Overlay and that is one reason she would like to be able to go back and re-visit that and have more time to get all of the information to make the most well-educated, informed and inclusive decision. She said we are where we are with the situation but the impact to a stream is something they should not take lightly so because of that she believes they need to as a board examine more in depth because they are going to have other issues that come up before the Board and we need to understand from a

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

recompense standpoint what is available to us, what authority do we have, what procedures, and what programs are there for that like the wetlands. That is an avenue that we can pursue and go down, but we need some clarification from staff and without having answers to these questions, she believes they would be making a premature formal decision.

**Scott Kilgore:**

Asked the City Attorney about the motion on the floor or actually an amendment to the main motion to impose \$50,000 recompense. He asked if that was nearing the edges of their legal boundaries or because it is part of the mitigation would they be okay on that.

**City Attorney Ken Jarrard:**

Stated the ordinance specifically provides that proposed mitigation is within the Board's purview. He said he would like to ask that if Mr. Rekuc's the main motion was going to go forward, if the Chairperson could have the applicant approach the podium and signify their agreement with particularly the monetary components of the motion. He said that would make him feel more comfortable and again, he believes what he heard from the presentation is that they were agreeable to that, but he would like that portion on the record.

**Walt Rekuc:**

Stated he made the motion and everyone else has talked, so he wanted to now give his point of view. He stated that again the Board has spent now over two hours on this case and another half hour before the meeting talking with staff about what has to be done, what could we do and what are options were and he said he felt he pretty well understood how we got here. He said he is not saying he liked how they got here - he is not happy and not happy to have to be put in this position and in some ways some of the things that happened were even out of the control of Mr. Wieland, as some of the things the county did and was not even sure the applicant had anything to do with either, but things happened and somehow we need to come up with a resolution to this and I am trying to find some means in which most of the people would be happy, but ultimately a decision has to be made and we have to go down the road and continue. He said as far as what gets done in the Crabapple Overlay, that is not in this Board's purview and that is not what is being decided here tonight. He said if the Crabapple Overlay says what he believes the staff told them and that was that it is supposed to have stone on these walls, then this was what he was asking the applicant to do. He said he was not asking them to come out with new lanterns on the streets or eliminating all Eleagnes, but ultimately something has to be done so we need to move on because the later we get into the season the less chance there will be to plant, there will be less time to work on the stream, so we need to get this done and over with and move down. He said the homeowners have been fighting this now and it has been deferred already one month and could now possibly could be deferred another month so let's get it done and move on down the road. He stated that we have to take our lumps from what the county gave us and that he was not happy about it, but we have to do something and come up with a solution.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**John McRae:**

Stated he concurred and said it was more eloquently said than he could have, but although we may not be 100% ready to make a decision, a 90% solution implemented is better than deferring to feel 100% comfortable in this situation. He said he felt they have had a vigorous debate and both sides have been well represented, so it is probably the right thing to do to move forward tonight. He said per the City Attorney's recommendation he would like to get the applicant on record with their agreement regarding the financial terms.

**Chair Sandy Jones:**

Asked Mr. Wieland to come forward and stated there was an amendment to the motion to modify the amount that would be set aside for the lake property owners for \$50,000 and wanted to get his approval on that.

**Applicant John Wieland:**

Stated they would be in agreement with a motion that said that a study would be made of the lake and we would pay our share up to \$50,000.

**Chair Sandy Jones:**

Asked if there was any further discussion.

**City Attorney Ken Jarrard:**

Said he wanted to make a point of clarification. He said to the extent that there is on the floor a motion for an amendment to the main motion that has not been voted upon that is different than what he just articulated, we may need to withdraw that second, restate the motion to amend if the Board is comfortable with what Mr. Wieland just articulated, and then have another second to that.

**Board Discussion about which motion was being withdrawn.**

**Scott Kilgore:**

Stated he was withdrawing his second motion.

**John McRae:**

**Motion and Second:** John McRae moved that they amend the terms of the Board's conditions to restitution to the property owners up to the amount of \$50,000 pending an independent survey of the silt existing in the pond and that it be John Wieland Homes' responsibility to undertake that. Seconded by Sandy Jones.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Asked if he could restate it to say they will make a payment of up to \$50,000 for the removing of silt from the downstream lake at Six Hills and to study the soil analysis of the lake and that payment would be made to the lake owners homeowners or if none exist, to the Six Hills Homeowners' Association.

**Applicant Dan Fields:**

Stated he just wanted to make clear that they would pay their responsibility of whatever silt they have caused in the lake up to \$50,000 and he did not believe that was exactly how it was stated.

**Walt Rekuc:**

Stated he would work on the wording.

**Board discussion about how to word motion.**

**City Attorney Ken Jarrard:**

Stated to the Chairman that she had seconded that motion and believed they were going to try it one more time. Said if she would withdraw her second.

**Additional Board discussion about how to proceed with withdrawing and making a new motion.**

**Chair Sandy Jones:**

Withdrew her second.

**John McRae:**

Withdrew his motion.

**Gary Willis:**

Withdrew his second of the original motion.

**Walt Rekuc:**

Withdrew his motion.

**City Attorney Ken Jarrard:**

Stated they were now at ground zero.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Thanked everyone in attendance for their patience and stated they were taking a little more time as there were a lot of issues discussed and a lot that they just wanted to make sure they were thorough in the motions being put forward.

**Walt Rekuc:**

Stated he wanted to read it to the group before he made it into a motion to make sure everyone understood it.

**Chair Sandy Jones:**

Stated they were still in discussion.

**Walt Rekuc:**

Said they would be responsible for the payment of a soil study of the silt in the downstream lake and in that study the applicant will pay up to \$50,000 for the removal of the silt that is found to be from their site only and the payment will be made to the residents that live downstream on the lake or to the Six Hills Homeowners' Association for the removal of the silt from the lake as well as the survey costs to be included in the \$50,000 maximum amount.

**Chair Sandy Jones:**

Said for clarification, he was asking the applicant to pay a total of \$50,000 which will include the cost for the soil survey and any cost associated with any mitigation activities, so it is two different conditions - mitigation activities up to \$50,000 plus they will pay -- okay, so the total is \$50,000.

**Walt Rekuc:**

Okay, let me try to fix the last portion.

**Further Board discussion about what to include in the motion and how to state the motion.**

**Walt Rekuc:**

Stated he would try to restate the motion and make sure everyone was okay with it.

They are responsible for the payment of a soil study of the silt in the downstream lake. In that study the applicant will pay up to \$50,000 for the removal of silt that is found to be from their site only. This payment will be made to the residents that lie downstream along the lake or to the Six Hills Homeowners' Association solely for the removal of this silt from the lake. This survey is included in the \$50,000 max allowance.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**John McRae:**

Asked the City Attorney if he saw anything that would make this not legally binding.

**City Attorney Ken Jarrard:**

Said no and particularly if the motion is made and that condition is part of it and a representative of the Wieland group would come up and announce after the motion and second is made that they are comfortable with that condition and then he said he would feel real comfortable that everything is okay.

**Gary Willis:**

Stated in the motion we have said *either the homeowners or to the Six Hills Homeowners' Association*. He asked if they should just pick one of those so there is not a hassle.

**Walt Rekuc:**

Stated the problem he had with that is there is not a true entity. He said he was afraid that if you give a check to four different people, they could just decide to pay for a college education and that is why he wanted it to go to the association.

**Statement for someone in the audience that Six Hills did have a homeowners' association.**

**Chair Sandy Jones:**

Stated that discussion had been closed.

**Walt Rekuc:**

Said, okay, he would state the conditions start again starting with number 1. Place 270,000 sq. foot recompense in a protective easement to the Braeburn Homeowners' Association to require this area to be left undisturbed. Number (2) regarding the total downstream faces of both retention pond retaining walls, discussion on the type of brick and mortar will be up to the City of Milton's Community Development Director; (3) supplement the disturbed area with a tree and mitigation planting plan for the disturbed area per the City Arborist's approval beside its retention pond wall; (4) install coir logs toe protection on Mr. Kish's and Mr. Anderson's property to stabilize the stream based on the Register Nelson's Stream Quarter Planting Plan if the homeowners allow; (5) plant Indian Grass or similar plants inside of the detention pond to help with the establishment of a buffer area within the pond; (6) that they be responsible for a payment of a soil study of the silt in the downstream lake. In that study, the applicant will pay up to \$50,000 for the removal of silt that is found to be from their site only. The payment will be made to the Six Hills Homeowners' Association solely for the removal of the silt from the lake as well as the survey costs. This survey cost is included in the \$50,000 maximum allowance; (7) install a turbidity stream at the stream's inlet to the Six Hills Lake just downstream from the property if the homeowners allow; and (8) place and maintain tree save fence and B & P's beside the detention pond walls that will have brick placed on them and outside of the recompense planting area.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

Seconded by Gary Willis.

**Chair Sandy Jones:**

Asked if there was any discussion.

Discussion:

**Scott Kilgore:**

Asked Mr. Rekuc to restate the opening to his motion, as he was considering making a friendly amendment.

**Walt Rekuc:**

Reiterated that he started his motion with *to approve this variance due to the hardship and damages that could occur to the stream if the applicant was forced to relocate the wall as shown on the applicant's claim.*

**Scott Kilgore:**

Stated he would like to move to strike the words *due to the hardship* because he did not feel that a hardship exists in this case and he did not believe that is why they are approving this. He said there was no hardship. There was nothing about the topography of the land that would have prevented them from building the wall in the correct wall, it was just done incorrectly and it was not a hardship that forced this to happen. He said this is not his motion, but he is just discussing right now. He said he would like to approve this based on the conditions that are being stipulated making this to be in harmony with the intent of the ordinance. He said the intent of the ordinance is to protect the stream. He said if they deny this, they would be shooting themselves in the foot as a city and they would not be protecting the stream, but just doing additional damage, so he believes the reason they are approving this is because this variance can be made to be in harmony with the intent of the ordinance which is to protect the stream. He said they need to be very clear on why they were approving this.

**Motion and Second:** Scott Kilgore made a motion to replace the words *due to hardship* and replace with *due to the ability of the granting of this variance to make it to be in harmony with the intent of the ordinance.*

**John McRae:**

Asked Mr. Kilgore to restate his introductory clause. He said he thought he knew what he was getting at but thought they could come up with a condensed version of it.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Scott Kilgore:**

Stated he was moving to strike the words *due to the hardship* and replacing those words with *in order to make the variance in harmony with the intent of the ordinance*. Seconded by John McRae.

**Chair Sandy Jones:**

Called for a point of order and asked if the discussion was limited just to the amendment or was the discussion for all amendments on the table.

**City Attorney Ken Jarrard:**

Stated at the present time the discussion was on the amendment to the main motion and then once that was voted upon then it will be opened for the full discussion.

**Chair Sandy Jones:**

Asked if there was any discussion. There was none. Vote: 4-1-1, with Gary Willis voting in opposition and Walt Rekuc abstaining.

**City Attorney Ken Jarrard:**

Asked Mr. Rekuc the basis for his abstention.

**Walt Rekuc:**

Stated that he did not quite understand the nuances of it, but he did not want to argue one way or the other, so it did not matter, but he did not feel like voting forward, so he abstained.

**City Attorney Ken Jarrard:**

Stated he would do what he always does in this situation and that is to say respectfully that a severe disagreement with an amendment is not a basis to abstain.

**Chair Sandy Jones:**

Stated they were back to the original motion and called for any discussion.

Discussion:

**Chair Sandy Jones:**

Said she needed clarification on two items. She said that in Mr. Rekuc's first item where he identified the recompense area, he had identified 270,000 sq. feet and in the presentation they had received from John Wieland, their proposed recompense area is 280,995 sq. feet which is an additional approximately 11,000 sq. feet from what was included in the motion and so she wanted to understand what happened to the 11,000 sq. feet.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

He said he should have clarified that, but he did not believe that keeping an area undisturbed at the rear of a lot that is probably going to wind up being a drainage swell or something like that would really remain undisturbed. He said he believed it was going to get disturbed and somehow it would wind up being something so that is what he asked the applicant about. He did not clarify in his motion that that area was to be removed, but he was willing to restate it to say that that 270,000 excludes any area inside of the looped road to clarify, but he did not think it made sense that that would become an area that is really being offering to the community and they are really only concerned about the area that is adjoining the subdivision next door, Crabapple Crossroads Subdivision. The applicant was asked how much of the area that was and they said around 10,000-15,000 so that is where that number came from.

**Chair Sandy Jones:**

Said that if the applicant is proposing it and the applicant has indicated that by bringing this forward to us they are comfortable with stating that this is a recompense area and they understand what that means and that it will be not disturbed and any construction related activities will be delineated so that basically these areas are kept secret, and they are coming before us and saying they are okay with this, then she wants clarification on why we are making a decision for them.

**Walt Rekuc:**

Said he would re-read it again. *Place 270,000 sq. foot area recompense in a protective easement to require this area to remain undisturbed.* He said there is no way that area within that looped road can remain undisturbed so that is why he removed it. He said he was trying to make sure that it was not just kept in a protective area, but also that it was also left undisturbed so that was the reason for the extra caveat.

**Chair Sandy Jones:**

Asked the difference between leaving an undisturbed area and a conservation area which the applicant had stated they would be creating a conservation easement for the property that is adjacent to the Kish's property.

**Staff Mike Tuller:**

Stated that in the undisturbed there would be some work that could be done within it, but a conservation easement is permanently protected and it is meant in perpetuity, where undisturbed there would probably be some minor cleaning and some activities that could take place in those buffers. Conservation easements can become somewhat of maintenance burdens too over a period of time.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**City Attorney Ken Jarrard:**

Stated that the conservation easement will depend on how the easement is drafted. He said you can do different things with the conservation easement depending on how you draft the easement and who the easement inures to and who is the owner, operator and enforcement of the easement, so there can be a legal issue but what he thought he heard the applicants say was they were prepared to put a conservation easement on a lot of the property that Mr. Rekuc mentioned.

**Chair Sandy Jones:**

Asked who would draft the easement document. She said they as the BZA could make this a condition, but who would draft the easement?

**City Attorney Ken Jarrard:**

Stated that typically the applicant would draft it and submit it for approval at the time of permitting to make sure that it fits what they are comfortable with, at least that is what he is used to seeing.

**Chair Sandy Jones:**

Stated that the applicant has come before this Board with a proposed site mitigation plan and for the Board to basically reduce what they have come before the Board in this mitigation, she said she was not comfortable with that. She said if they had come before the Board and made a goodwill offering and for the Board to modify it and reduce it, she did not feel that was right. She said that the 11,000 sq. feet to be kept as a recompense area, she would like to maintain that and she understood Mr. Rekuc's intent, but applicant has said they were willing to make this a conservation easement and given the situation and consideration of the adjacent property owners, she felt this might be the best they can do in a semi win-win in that limited area from a land protection.

**Walt Rekuc:**

He said he could change it back if that is what they wanted him to do.

**Staff Angela Rambeau:**

Asked the Chair Sandy Jones for clarification. She asked Mr. Rekuc if he was asking for the loop road area for maybe a tree save area or a buffer instead of the conservation area back there.

**Walt Rekuc:**

He said the problem was when he phrased it, he wanted to phrase it so that he would be putting at least a little more restrictions on the boundary beside the subdivisions to further preclude that if you did have a permanent conservation easement that does not mean that you could not build sidewalks, so he wanted to make it a little more restrictive. He said if that was a problem, he would remove that.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Scott Kilgore:**

Stated he thought the word *undisturbed* meant it would be undisturbed by the developer. The Homeowners' Association would be free to put in picnic tables and sidewalks in or whatever they want with that area.

**Engineer Carter Lucas:**

Stated as a point of clarification the area in the middle of the loop road has already been disturbed. He said that area had already been graded and there is stormwater management systems installed in there already so a conservation easement would probably have to be worded two ways. He stated you would have to have one conservation easement that covers those undisturbed areas that have not been touched yet, and a separate conservation area for that area in the middle of the looped road that would permit maintenance activities to occur on those stormwater maintenance activities that are already installed.

**Chair Sandy Jones:**

Asked for clarification, referencing an area on a map, the green area north of the wall and in the southern corner, were both of those areas still undisturbed areas.

**Engineer Carter Lucas:**

Said he was being told the majority of the lower portion was undisturbed. He said there was a stormwater outlet that discharges into that area that would require some maintenance and they could work with the applicant on the exact location and the wording of that conservation easement.

**Chair Sandy Jones:**

Said right, if he understood the intent of what they were trying to accomplish then Mr. Lucas could work on the legalities of it.

**Engineer Carter Lucas:**

Stated if they were including the center portion in the looped road, they would most like do that portion under separate conservation easement that would allow certain activities there that would not be permitted in the other conservation areas.

**Chair Sandy Jones:**

Stated since they agreed to move forward with this tonight, she wanted to make sure they take their time and have done a thorough job of it.

**Walt Rekuc:**

Stated he agreed.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Asked if there were any other comments from any of the Board members on the discrepancy between the 270,000 sq. foot recompense area and the 11,000 additional area.

**John McRae:**

He said given the fact that there will be additional discussion when the easement is applied for, that will solve the Board's problem. He said he believed their job would be to approve the 280,000 number and then at that point their responsibility would stop. He said the other competent areas of our city government would take it under advisement what has been discussed here tonight, so in essence he agrees.

**Chair Sandy Jones:**

Said for clarification and she apologized for being totally out of order with Robert's Rules here, but if for the proposed recompense area, if the 280,995 sq. ft. for the conservation area to be tailored based on the site conditions, could Mr. Lucas help guide the Board a bit on how best to word that type of motion so that it gives direction and leeway to be able to do that?

**Engineer Carter Lucas:**

Stated that if that area is broken up that is in the middle of the looped road, separate that out, the remainder of that if that is the 270,000 sq. ft. that Mr. Rekuc had mentioned, that would be an undisturbed conservation easement. He said the portion that is within the looped road could be covered under a conservation easement and whether or not the Board would need to expound on that to include additional maintenance activities to deal with the stormwater systems that are already in place, you could be included in that motion. He said what you are trying to get at is a re-vegetated buffer within that area, so the square footage within the looped road when then be re-vegetated to buffer standards approved by the City Arborist which would allow us to work with the applicant to establish the number and types of plants for those areas.

**City Arborist Mark Law: [9:49:50] - not audible**

Said planting to buffer standards would state primarily Evergreens and dictate how many rows and he did not know if that was what they were looking for or not.

**Engineer Carter Lucas:**

Said just leave it as a conservation easement without the undisturbed portion of it.

**Board discussion about how to word the motion.**

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Said she had another clarification question regarding Mr. Rekuc about him mentioning the brick on the wall and both faces of the walls. She asked if that was inside and outside of the wall.

**Walt Rekuc:**

Said he said bricking the total downstream faces of both detention pond retaining walls. In other words there is one wall that the variance is being asked for and the other wall that the variance is not being asked for and that makes it conform to the overlay. He asked if that was a problem.

**Engineer Carter Lucas:**

Said there are actually 3 walls.

**Applicant Dan Fields:**

Stated what they had agreed to with the owners to the south on the walls that they are looking at along the boundary line, those are the two walls we are talking about because those are the two retaining walls that face the north of the property and it is those two walls that they had agreed would be visible to people. The other wall faces the wooded area and there is nobody that can see that wall as it does not abut any external property.

**Chair Sandy Jones:**

The property being discussed now runs along the entire perimeter of that wall. Then just that face then facing the Kish property will be the only facing on the wall that will be bricked.

**Applicant Dan Fields:**

Stated it runs along the boundary of the outside of both the Anderson property and the Kish property.

**Applicant John Wieland:**

Stated he wanted to specify the walls that can be viewed by the Anderson and Kish properties.

**Walt Rekuc:**

Stated his problem is the part of the wall you see in the summer is different than what you might see in the winter. He said you may see some of the side of that wall.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Engineer Carter Lucas:**

Said you may want to say the wall facing the northern boundary.

**Marcia Parsons:**

Said she did not know how much extra square footage to deal with the other wall would be, but to help comply with some of the Crabapple Overlay concerns, it may be a good concession to have them brick that wall too.

**Gary Willis**

Said if nobody is going to see it, then there would be no need to brick it.

**Board discussion about walls referencing plans.**

**City Attorney Ken Jarrard:**

Advised the Board that they had a motion on the floor with two amendments. One motion was for the conservation easement and one for the bricking.

**Gary Willis:**

Stated he was withdrawing his second to the original motion.

**Walt Rekuc:**

Stated he was withdrawing his motion.

**City Attorney Ken Jarrard:**

Stated okay, we are back to square one yet again.

**Walt Rekuc:**

Restated the conditions to say:

- place 280,995 square feet in a recompense area in a protected conservation easement;
- (2) brick the total external faces of both retention pond walls, discussion of the type of brick and mortar will be up to the City of Milton Community Development Director;
- (3) supplement a tree plan and mitigation planting of the disturbed area per the City Arborist's approval beside the detention pond walls;
- (4) install a coir log toe protection on both Mr. Kish's and Mr. Anderson's property to stabilize the stream banks based on the Register Nelson's Stream Quarter Planting Plan if the homeowners allow;
- (5) plant Indian Grass or similar plants inside of the detention pond to help with the establishment of a buffer area within the pond;

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

- (6) that they be responsible for a payment of a soil study of the silt in the downstream lake. In that study, the applicant will pay up to \$50,000 for the removal of silt that is found to be from their site only. The payment will be made to the Six Hills Homeowners' Association solely for the removal of the silt from the lake as well as the survey costs. This survey cost is included in the \$50,000 maximum allowance;
- (7) install a turbidity stream at the stream's inlet to the Six Hills Lake just downstream from the property if the homeowners allow; and
- (8) place and maintain tree save fence and B & P's beside the detention pond walls that will have brick placed on them and outside of the recompense planting area. This is to be made in harmony with the intent of the ordinance.

The motion was seconded by Sandy Jones.

**City Attorney Ken Jarrard:**

Stated before the vote he wanted to clarify that the motion was to approve the variance based on harmony as they discussed with the specified conditions and at this time wanted a representative from Wieland come forward and announce that they are comfortable with the condition regarding the \$50,000 only.

**Applicant Dan Fields:**

Stated they were comfortable with the condition of the \$50,000.

**Chair Sandy Jones:**

Stated there was a motion and a second on the floor and no further discussion, she would call for a vote. Vote: 6-0 and the motion passed unanimously.

**Chair Sandy Jones:**

Stated they would take a 5 minute break and resume at 10:06 p.m.

**Chair Sandy Jones:**

Reconvened the meeting at 10:10 p.m.

**Chair Sandy Jones** called the next variance request.

**V08-013, 15975 Freemanville Road, Robert Bohensky**

**Staff Angela Rambeau** read the Petition and stated this variance request was for the following: To allow an accessory structure (a barn) to encroach into the front yard (Article 5.1.3.I) and had deferred from last month. The location would be approximately 10-15 feet from the road which would violate the 60 foot front setback. She stated at one of the last meetings one of the issues that had not been addressed was the structure encroaching into the 25 foot side yard setback and the applicant has stated that has rectified that situation. She site they was no new site plan, but he did state this verbally.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Staff's Recommended Conditions if Approved:** (1) Maintain the existing vegetation along Freemanville Road; and (2) Remove the two existing outbuildings in front of the house.

**Applicant Robert Bohensky, 15975 Freemanville Road, Milton, GA**

Told the Board that the 25 foot side yard setback was fine with him and he could actually go 20 feet from his fence which was 15 feet from the street. He said he brought his rough drawings for the Board to review showing what the barn would look like. He stated he did not know what was considered a specimen tree. He said he wanted to try to keep the big tree shown in the drawing. He said if he got any further away from the side yard that tree would be right at the entrance of the building he wanted to build. He told the Board the sheds behind the tree are what he was planning to take out. He said the sheds are currently too close to the house and that was why he was tearing them down.

**Chair Sandy Jones:**

Asked if there were questions for the applicant.

**John McRae:**

Asked applicant if he had found a licensed and bonded contractor to perform the work for him.

**Applicant Robert Bohensky:**

Stated he had hired David Cox who has built several barns in this area and he was licensed and bonded.

**Scott Kilgore**

Asked if the tree in the picture did not look very healthy.

**Applicant Robert Bohensky:**

Stated he really did not know too much about trees, but it had been there since he moved there about 4 or 5 years ago and keeps growing leaves.

**Gary Willis:**

Asked applicant if when he puts the new barn in, that tree would not be affected at all like the root system?

**Applicant Robert Bohensky:**

Stated not where he wants to put the barn.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Scott Kilgore:**

Asked the applicant how close the barn would be to the tree.

**Applicant Robert Bohensky:**

Stated the tree was approximately 100 feet from his side yard fence line and the building would be 40 feet long, 25 ft. off of the fence, so it would be around 35 ft. to the actual tree so it should be fine. He said he really wanted to keep the tree as they enjoy it in the summertime and keeps his place cool.

**Gary Willis:**

Asked applicant if he drew the sketches.

**Applicant Robert Bohensky:**

Stated that he did not and that Net Mobility did.

**Walt Rekuc:**

Stated that on the detail it was showing that there was going to be wood board and batten siding but it did not state any colors or anything like that. He asked if the applicant would be staining that or what he planned to do. He also asked applicant about the color of the metal roof and the doors.

**Applicant Robert Bohensky:**

Said he was definitely staining it and it would be stained a dark color like the house. He said he wanted a dark green color for the roof and for the door he wanted to blend in with the darker colors that are there.

**Discussed with the Board the colors from a color chart applicant had.**

**Walt Rekuc:**

Asked applicant if when he said 15 feet, was he saying that his fence was 15 feet from the edge of the street.

**Applicant Robert Bohensky:**

Stated that was correct.

**Board discussion about what the correct setbacks were.**

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Said so what applicant is saying is that it is 20 feet from the inside of his property line into his building, so it is 20 feet from the front and then on the side yard which is a triangular piece of property, but it is 25 feet off of the side property line.

**Applicant Robert Bohensky:**

Said he had no problem at all with the 25 feet.

**Walt Rekuc:**

And then we would condition the colors for the building and also the shape and windows and things of this nature.

**Chair Sandy Jones:**

Asked if there were any additional questions or questions of the applicant. There were none. Asked if there was any public comment. There was no public comment.

**Chair Sandy Jones:**

Stated that the public hearing was closed. Asked if there was any further discussion.

**Marcia Parsons:**

Asked Staff about the setback from the front from Freemanville Road and what was the intent of the ordinance for that setback? Was it for safety?

**Staff Mike Tuller:**

Said as part of the NW Overlay the intent was not to have a lot of structures in the front yard like garages and such. He said they wanted the house to be the primary focal point as you drove down the roadways and that was also part of the reason they requested that the parking be shifted to the side or back of properties and not be placed in the front. They really wanted the house to be the focal point. He stated that this house here has some extenuating circumstances based on the existing conditions, like the resources in the back of the property, so it makes it very difficult to follow the Overlay specifically with regard to this application. He said that the intent is with new developments coming in they really try to make the residential structure the primary focal point from the roadway.

**Chair Sandy Jones:**

Asked if there were anymore questions for Staff. The Chair asked if there was a motion.

**Motion and Second:** Gary Willis made a motion to approve V08-013, to allow an accessory structure, a barn, to encroach into the front yard due to a hardship, which is the topography of the property and would like to attach the following conditions:

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

- That the barn match the submitted drawings;
- That it be no closer than 35 feet from the street; and
- That harmony is achieved because of screening.

**Walt Rekuc:**

Stated he would second the motion for discussion.

Discussion:

**Walt Rekuc:**

Said he would rather when they are making a reference to a building, make it from the property line versus the street, so if it could be stated 20 feet from the front property line and 25 feet from the side property line.

**Scott Kilgore:**

Stated the variance was only to encroach into the front yard, so they did not have to worry about the side yard. He said that would be covered under permitting.

**Walt Rekuc:**

Said also, he believed the hardship was due more to the shape of the property and the creek. The last thing is he wanted to do a little clarification on the type of finish on the building to make sure that it would be a dark stained wood on the exterior as well as a dark green roof, and that all trim, windows and doors shall be also dark green or darker. He said he just wants to make sure it stays dark, and 20 feet from the front building setback.

**Scott Kilgore:**

Said dark and using one of the city's approved colors.

**Chair Sandy Jones:**

Asked Mr. Rekuc if he was making a friendly motion.

**Walt Rekuc:**

He stated he was. He asked applicant what the city's color chart was called.

**Staff Angela Rambeau:**

Stated he could say something like per the NW Overlay and per City Ordinance.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Stated that what he was going to say was that the color the building siding shall be dark stained, the roof, trim, windows and doors will be dark green as available in the color chart by the NW Overlay.

**Walt Rekuc:**

Walt Rekuc made a friendly amendment to the original motion and that would be that the color of the building siding shall be dark stained, that the roof, trim, window trim and doors shall be dark green as available in the color chart by the NW Overlay. Seconded by Sandy Jones.

**Chair Sandy Jones:**

Asked if there was any discussion.

Discussion:

**Marcia Parsons:**

Said she was not sure about dark green trim around the doors and windows. She said could they just specify a dark color approved by the NW Fulton Overlay.

**Walt Rekuc:**

Said okay, but he did want to say that the color of the building needed to be dark and wants the roof to also be dark and not white or fiberglass roof and windows and a door that is a roll-up steel metal door.

**Chair Sandy Jones:**

Asked if the Board could defer the specifics to Staff and so whatever the requirements of the NW Fulton Overlay are that Staff could specify.

**Staff Mike Tuller:**

Said that would not be a problem and they could also coordinate with the Design Review Board.

**Chair Sandy Jones:**

Stated she was withdrawing her second.

**Walt Rekuc:**

Stated he was withdrawing his motion.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Gary Willis:**

Stated he was modifying his original motion to say that it shall be no closer than 20 feet from the front property line and that the colors of the barn be selected from the palette of the City of Milton Staff and that it coordinates with the existing colors of the NW Fulton Overlay. Sandy Jones seconded the motion. There was no further discussion. Vote: 6-0. The amended motion carried.

**City Attorney Ken Jarrard:**

Stated the Board had to vote on the main motion.

**Chair Sandy Jones:**

Stated the Board had to vote on the main motion as amended of Gary Willis. Vote: 6-0. The main motion carried unanimously.

**Chair Sandy Jones** called the next variance request.

**V08-014, 420 Majestic Cove, David and Julie Albano**

**Staff Angela Rambeau** read the Petition and stated this variance request was for the following: 1. to allow a swimming pool to encroach into the 50 ft. undisturbed stream bank buffer (City Code Chapter 14.6.5.i) and 2. To allow a swimming pool to encroach into the 75 ft. impervious setback (City Code Chapter 14.6.5.ii). She stated the site was located in the Crooked Creek Subdivision and currently zoned CUP. Applicants are requesting a variance so they may position the new pool within the 50 foot stream bank buffer. She stated one of the requirements for a stream buffer variance is to provide a mitigation plan or to explain why one cannot be provided. She said a mitigation plan was not provided per discussions with Staff as there is basically no other location in the rear of the side yard that the pool could be placed without encroaching into the 50 ft. buffer or the 75 ft. impervious setback. She stated there was a focus meeting where the case was discussed and the building plan review had no issues, the site engineer suggest the applicant be asked to sign an affidavit stating that they were aware that they were not allowed to encroach into the 25 ft. state stream buffer during construction. She further stated the applicant would be required to provide a new site plan correctly showing the silt fence and tree save fence of the 25 ft. buffer, and the engineer suggested that the applicant make the pool a little smaller to make it easier to do the construction without the risk of encroaching into the 25 ft. buffer. The City Arborist stated there are no specimen trees appear to be impacted by the proposed pool and transportation and stormwater had no issues. The applicants claim their hardship is the standard of the unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship, as they bought the house under one set of rules and then the rules were changed and also the size, topography and layout of the lot.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Staff's Recommended Conditions if Approved:** (1) The proposed paths and at least part of the pool deck shall be constructed of pervious materials; (2) Provide a new site plan, prior to issuance of a pool permit, showing the silt fence and tree save fence out of the 25 ft. buffer. The site plan should also show the required pool fence out of the 25 ft. state buffer, as well, and (3) reduce the size of the pool in order to meet the above requirements.

**Applicant David Albano, 420 Majestic Cove, Milton, GA:**

Stated there are 16 homes on their side of the street and a warm water stream that runs behind it and there are currently 5 existing swimming pools out of the 16 homes and all were permitted by Fulton County. He said that the pool next door to his is located 25 feet from the stream bank and there is also a house two doors down currently vacant that was actually built at the 25 ft. mark and the 3rd house door has a spa and a patio at 25 feet. He said he had provided statements from the neighbors on either side of the lot and the City of Milton also sent letters to the surrounding neighbors suggesting they attend if they objected to this work being done. He stated that had property posted the blue sign in their yard for the required timeframe. Mr. Albano told the Board if not able to complete this work, it would create an unnecessary hardship as there is nowhere else on their property that they could actually build a pool and with so many of the other neighbors having pools and much larger patios, it could make their lot less attractive and therefore unmarketable. He said relief, if granted, would be in harmony with the general purpose and intent of the zoning resolution.

**Chair Sandy Jones:**

Asked if there were any questions for the applicant.

**Gary Willis:**

Asked how big applicant's lot was.

**Applicant David Albano:**

Said it was a third of an acre.

**John McRae:**

Asked when the site plan was prepared.

**Applicant David Albano:**

Stated about two months ago.

**Walt Rekuc:**

Asked if his property was on septic or sewer and if there was a drainage easement ran through his property as well.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant David Albano:**

Stated it was sewer and the drainage easement ran adjacent to his property so between his property and his neighbors' property.

**Walt Rekuc:**

So that easement would preclude you from placing a pool in that area, is that correct?

**Applicant David Albano:**

Stated that was correct. He said there is a 20 ft. easement to stay about from that drainage area.

**Walt Rekuc:**

Asked if the property dropped off a good bit from the end of his existing driveway going toward the back of the property.

**Applicant David Albano:**

Stated it did.

**Walt Rekuc:**

So that further precludes your ability to move that pool into that little corner on the property?

**Applicant David Albano:**

Stated that was correct.

**Walt Rekuc:**

Asked if the pool could possibly be turned sideways and possibility get it into that area or is the drainage easement purely causing most of the problems. If that was not there it looks like you might possible be able to move it and get it further away, plus with only 1/3 of an acre, the lot is pretty small to consider a pool.

**Applicant David Albano:**

Stated that actually the way the creek runs instead of staying 25 feet off of the rested vegetation area, the creek actually comes closer on that portion of the property that you are referencing and where we are trying to put in it actually moves further out toward the golf course so that is what gives us the extra room.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant David Albano:**

Asked for clarification on something Angela stated about the fence not being able to go into the 25 foot buffer area. He asked where the fence is able to go, as a fence would have to be put up.

**Walt Rekuc:**

Stated the pool just had to be fenced but it did not have to go around the entire yard.

**Chair Sandy Jones:**

Said applicant just had to stay out of the 25 feet during construction.

**Angela Rambeau:**

Advised applicant the fence could go along the edge of the pool deck because that would be out of the 25 feet.

**Walt Rekuc:**

Stated it sounded like applicant had a hardship but wanted to hear what his neighbors had to say.

**Chair Sandy Jones:**

Told Staff the applicant mentioned letters from the adjacent property owners and stated the Board did not have those.

**Marcia Parsons:**

Stated she thought those had been emailed to them.

**Staff Angela Rambeau:**

Stated she did not have the letters printed out and with her.

**Chair Sandy Jones:**

Said she disregarded things that come into a personal email and stated if it is not in the record she did not review it.

**Marcia Parsons:**

Had her printed copy of the emails and passed them along to the other Board members for their review.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Gary Willis:**

Asked if the Homeowners' Association gave their approval as well.

**Applicant David Albano:**

Stated he did go to them and they came out to the property. He said the association was just waiting for the results of this meeting and then submit the paperwork to them. He said he also met with the golf course and they gave their approval as well.

**Chair Sandy Jones:**

Asked if there was any public comment. There was none. Public hearing was closed. The Chair asked if there were any other questions for Staff and whether there was a motion.

**Motion and Second:** John McRae moved to defer the petition contingent the applicant providing a new site plan more in line with Staff's recommendations to reduce the size of the pool and conform to the existing ordinance. Scott Kilgore seconded the motion.

Discussion:

**Walt Rekuc:**

Said again, if the Board makes a motion and says what has to be done, then the applicant will have to change his plans because he cannot get a permit from the city until those plans get approved and whether they move over 5 feet or makes the pool smaller or takes out the existing wooden deck and moves it on the side, it really would not matter to us. All the Board is trying to say is that the maximum they can get into the impervious setback is a certain value and that is all we are trying to do. He said if they want to come back and revise the plan, they can come in and show it to the Staff. He said he trusted the Staff to some degree, but he wanted to make sure they can move on before summer was over.

**Gary Willis:**

Stated he would agree with what Mr. Rekuc said but mostly because he did not see any reason for the applicant to go out and spend a whole lot more money to have a whole other site plan done when he did not believe the Board needed that to make this decision.

**Marcia Parsons:**

Said her concern was what he can and cannot do on the property to comply with the ordinance regarding the stream buffers. She said he may not like the size of that pool when it is all said and done. She thought it might behoove him to have another site plan produced and then bring it back.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Stated her comment was when deciding to move on a variance request, the Board looks at specific conditions based on a specific site plan and if conditions or a site plan changes, then the basis for their decision for the variance may change. She said the variance is tied to a certain site plan and as the plan is now, we could not move forward so she supported Mr. McRae's recommendation for deferment.

**Scott Kilgore:**

Stated he agreed with the Chair's statement. He said he was concerned with the health of the stream. He thought this would be pushing right up next to the stream and they needed to see a significantly smaller pool with some pervious surface to help mitigate some of the loss of pervious surface and filtration of water that was running into the stream. He said he would rather their decision be based on a site plan that they could all agree on.

**John McRae:**

Stated that although Fulton County ostensibly permitted the other pools that the applicant mentioned, he did not believe that was sufficient cause for the Board to follow suit. He stated Milton was created for a reason and believes this case needed to stand on its own merits if and when it was represented.

**Chair Sandy Jones:**

Stated they evaluate each case as an individual unique discreet case and not based on precedent and it has to be determined based on the current conditions and current regulations that we have.

**Walt Rekuc:**

Stated that one thing they had to take into consideration and he did respect the other board members' opinions, but he wanted to point out that this house was in a golf course community where there are probably around 100 acres of open space that is here and he believed this was a CUP which basically states that they have smaller lots for the very reason that they do have so much green space dedicated towards the golf course and many of that is what is really helping reduce the stormwater loads. He said as a property owner, he was trying to be respectful of applicant's money and his family to try to get them at least in a pool before the summer was over. He said he understood they should stand by the law, but at the same time they have letters from all the adjoining homeowners that state as far as they are concerned they are in harmony with approving this and their is also the hardship situation with both the area of the lot, the drainage easement, the shape and topography that prevents the pool to go in many other locations, this gentlemen in boxed in. He said he understands that applicant bought the property, but at the same time he was trying to be humbly respectful and believes he could work out the issues and it would still have to go through Staff for approval if we put these conditions on it until he abides by those conditions to make it work. He said the whole purpose of a CUP is allowing a lot more open space in golf course community. The county did allow smaller lots on sewer in a CUP for a golf course would be more or less the open space in the community.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Sandy Jones:**

Stated his comments were well taken and in respect to his comment regarding harmony, the Board's charge is to evaluate harmony as it relates to the spirit and intent of the ordinance and not necessarily harmony in relation to the adjacent property owners. The Chair stated the Board has a due process that they go through and then it was up to them as individual members on what they feel about it. She said he they feel they have adequate information and feel comfortable moving forward, and then they can move forward.

**Walt Rekuc:**

Said maybe they could make it conditional upon a revised plan that the Staff could review and approve.

**Sandy Jones:**

Reiterated her previous statement that the variances are tied to the site plan.

**Chair Sandy Jones:**

Stated the motion on the floor was to defer the matter.

**Applicant David Albano:**

Told the Board that he had been working with the City for over six months trying to get feedback on what he needed to do to put the pool in. That guidance was no provided proactively, so all he could do is a basic plan to show that he is staying outside of the buffer areas. He said he was willing to work with them regarding the contingencies they put on this, but he said there was not a process in place to allow him to put a site plan in front of the Board based on how they are setup today. He said so the Board is deferring his case, but has not told him what the issues were. He stated he could have solved all of those coming in, but there has been no one to work with to do that because that is not allowed. He said his point is if there are contingencies, then put those contingencies on and do not approve his permit if he does not satisfy those, but do not make him defer another month to go and spend another \$1,250 on a site plan. He said he did not feel that was appropriate. He said he will do what he needs to do and if he did not, and then do not grant him the permit. He said he needs to know what the conditions are before hand so he can come in prepared and there was no process to do that today.

**Scott Kilgore:**

Stated the conditions are that applicant meets the stipulations of the Milton stream buffer ordinance which means the pool could not be put in and the Board would just deny it. He asked if he rather they just do that. It comes down to whether they are going to enforce the ordinance or not and can it be made to be in harmony with the ordinance. He stated looking at the site plan before them he could not even see where the various setbacks were.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Marcia Parsons:**

Asked if they could add what Staff recommended like the pervious pool deck material and where that would be and show the silt fence, the tree save fence and show how it was outside of the 25 ft. buffer and require the pool fence outside of the 25 ft. state buffer and show all the 50 stream buffers.

**Scott Kilgore:**

Said he keeps hearing about the state buffer and while it exists, there is the Milton buffer to be concerned with as well. He said if the Board approves this; it has to be approved because whatever conditions they put on it, the majority of the Board agrees that that makes it to be in harmony with the intent of the Milton ordinance which is 75 feet of impervious setback. Stated the Board needs to see mitigation and that the stream would not be impacted.

**Walt Rekuc:**

Stated again that CUP means that you are looking at the whole project and what the benefit of having a golf course next to your community or home, which is basically creating that green space. Stated they do need to look at this in the context of the whole project. The applicant may not know where the detention for the whole community goes. He said when he looks at a CUP he believes they have to have a good bit of open space and less impervious than other sites. Mr. Rekuc said the main thing the Board needs to consider is that the project is in a CUP and more than just an acre of land. He does not have many options and the neighbors do not object. He said they had approved one not too long ago in the same neighborhood with the same type of situation and that lot they were able to get the pool further from the creek, but in this case the creek is much closer.

**John McRae:**

Asked the applicant if he received a copy of the packet the Board received and referred Applicant to page 5 of 10, the recommended conditions are specified as per Staff. He told applicant he basically needed to reconcile his plan both in terms of the setbacks from the buffers and in terms of the overall pool size and try to meet the Board halfway. He thought if he made that effort that would at least give the Board a launching board to at least set some conditions to make the project work. He said that was no guarantee, but that would at least be a better starting point than what they currently had before them.

**Chair Sandy Jones:**

Reminder Mr. McRae that they were in discussion and he should not be directing comments to the Applicant. The Chair then asked if he was saying he would like to approve the project conditional or was he asking for the Applicant to come back before the Board after the items had been addressed next month.

**Chair Sandy Jones:**

Stated that the motion on the floor was to defer the case until their next meeting and requesting the applicant to address the recommended conditions on a site plan. She asked if

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

there was any further discussion. There was no further discussion. Vote: 3-3, with Scott Kilgore, John McRae and Marcia Parsons voting for the motion and Sandy Jones, Walt Rekuc and Gary Willis voting against the motion. Motion failed.

**City Attorney Ken Jarrard:**

Stated the motion failed as a majority vote is required. He stated that a tie is a failed vote, so the matter is back before you for consideration.

**Chair Sandy Jones:**

Said the conditions the Board is asked for are fairly well prescriptive and explained in the recommended site conditions. She said that basically if the applicant came before the Board demonstrating all of the conditions requested, then she will projecting in the absence of any new evidence or information came up, that the Board would move to approve at that point. She said she would like to throw out for consideration would be that they approve this petition with the specified conditions. She asked Staff if there was any other type of permit in order to just break ground or was the pool permit the first step to be able to break ground and start work. He said and he would not be able to get the pool permit unless he had addressed all of the concerns the Board had.

**Staff Angela Rambeau:**

Stated that would be the permit he would get for the construction.

**Motion and Second:** Sandy Jones made a motion to approve Petition V08-014 and that the variance shall be granted due to the hardship created by the shape, size and location of the creek on the property and by granting the variance it could be made with the intent of the ordinance and condition the approval upon meeting the following conditions:

- (1) that the proposed path and at least part of the pool deck shall be constructed of pervious materials;
- (2) provide a new site plan prior to the issuance of a pool permit showing silt fence and tree save out of the 25 foot state buffer;
- (3) that the site plan shall show the required pool fence out of the 25 foot state buffer;
- (4) show the 50 foot stream buffer and 75 foot impervious setback on the site plan;
- (5) reduce the size of the pool in order to meet the above requirements; and
- (6) the applicant shall sign an affidavit stating that they are aware that they are not allow to encroach into the 25 foot state stream buffer during construction. This includes construction equipment.

Walt Rekuc seconded the motion.

**Chair Sandy Jones:**

Called for discussion.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

Discussion:

**Scott Kilgore:**

Stated he would submit that there is a hardship in this case and that the Milton Ordinance does not guarantee the right of property owners to do anything they want. He said he realized there was a desire to build this pool and perhaps evening a willingness to shrink the pool, but it does not meet the criteria of a hardship. He said it is nothing that has to be done and the argument that there would be a decrease in property value he did not see. He stated he did not see a legal hardship and was not sure harmony would be achieved when they are completely within the impervious setback and there was very little mitigation going on. He said he thought Staff had tried to provide as much as they could given the situation with it being such a small lot.

**Chair Sandy Jones:**

Asked Staff the date on the aerial photograph they were presented with.

**Staff Angela Rambeau:**

Stated she thought they were 2007 pictures. She restated that she saw the date of April 1, 2006.

**Marcia Parsons:**

Stated she still had a problem with him not providing a new site plan and it would help him visually to see if he still wants the pool if he has to shrink it too much because of having to stay out of the state buffer.

**Scott Kilgore:**

Stated the citizens have entrusted us to uphold the standards that are in the stream buffer and when they chip away at those standards and give them away, he believes they are doing the citizens a disservice. He said he knew they were not present complaining about this project, but he said they need to keep this in mind when they grant these types of things.

**Gary Willis:**

Told Scott Kilgore to remember that whether a citizen is present for or against it has nothing to do with the decision that the Board makes.

**Walt Rekuc:**

Told Scott to look again at the picture and see how much open space was behind the homes and yes, there may not be a pool behind every house, but there is a good bit of open space and that is part of living in a golf course community is and that is what these properties allow, versus if you were on a standard lot on an acre. Also it is a basin by basin decision. He said if they were hard math people, then he would ask the applicant to go back and show them proof that under buffer averaging, etc. that there was a sufficient buffer along the

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

whole quarter to warrant a variance based on how much buffer was preserved upstream. He said just looking at it, it looks like it is a very heavily wooded crook all along that golf course. He stated as far as the site plan is concerned, it is something they will need to get permitted and by delaying him a month would make a difference to him and his family and they would lose the summer waiting in addition to 30-60 days to build it anyway. Mr. Rekuc stated that the real question was if the applicant goes back and revises the site plan, does that change anything we have just heard in our conditions and he stated the answer was no. It would not matter if he goes back and spends \$1,200 to go back and change the plans if the Board is not going to approve it anyway so why have him spend the money to begin with - just turn him down and deny it.

**Scott Kilgore:**

Stated he had a question about the condition that was stated. Mr. Kilgore said if he was reading it correctly, it says that at least part of the pool deck shall be constructed of pervious materials. He thought they needed to specify how many square feet or some percentage or perhaps a grass buffer strip between the deck and the edge of the bank. He said he did not think they were doing anything to mitigate, but just saying okay you have met the requirements of the state, but we are not going to worry about the Milton requirements.

**Walt Rekuc:**

Said that was a good point. He said perhaps maybe going with some rain barrels or some other things that could help with mitigation on the storm water or do a trench. He stated there was new method where you trench on the downstream side to let water percolate in. He thought it was something like 3 foot by 6 inches with some type of mulching material.

**Engineer Carter Lucas:**

Said it could vary from a gravel trench or infiltration type of trench to a vegetative type trench if it were on the downstream toe to try to mitigate the flow off of the pool deck and into the buffer.

**Scott Kilgore:**

Said you would have to have some space between the pool deck and the top of the bank to do that and the way this site plan is the pool is butting right up against that 25 foot buffer so there is nothing there at all and it will just run right off the edge of the deck right down the slope and into the stream.

**Engineer Carter Lucas:**

Said it would have to be located outside of that 25 foot before in order to not require a variance from the state.

**Walt Rekuc:**

Asked Mr. Lucas what that type of system was called.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Engineer Carter Lucas:**

Said it could be an infiltration trench and also a bio-retention type area.

**Chair Sandy Jones:**

Asked if there were any other comments. There were none. Vote: 3-3, with Sandy Jones, Gary Willis and Walt Rekuc voting for the motion to approve the variance with the stated conditions, and Scott Kilgore, Marcia Parsons and John McRae voting against the motion. Motion failed.

**Chair Sandy Jones:**

Okay, the motion failed and we are right back where we started. Called for another motion.

**Motion and Second:** Walt Rekuc stated he moved to propose the same things that Ms. Jones stated in her motion but add the 3 ft. wide gravel infiltration trench along the border of the pool that would be parallel to the property line on all impervious surfaces and outside of the 25 foot stream buffer.

**City Attorney Ken Jarrard:**

Reiterated that the motion would be exactly the same motion that had just been read by the Chair Sandy Jones and voted on with that one additional condition and that would be the motion.

**Walt Rekuc:**

Stated that was correct.

**Gary Willis:**

Seconded the motion for discussion.

Discussion:

**Scott Kilgore:**

Asked Staff if a 3 ft. trench strip was sufficient.

**Engineer Carter Lucas:**

Stated they would be happy to work with the applicant to size it appropriately as far as depth and whether or not there is an under drain or it is just an infiltration type trench too.

**Scott Kilgore:**

Asked Mr. Lucas if in his professional opinion if that would serve to mitigate this type of situation and whether it was effective.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Engineer Carter Lucas:**

Stated it was one type of mitigation that can be used and can be effective. He said he was not too familiar with this particular case and what the existing buffer looked like, but it was something they typically use particularly adjacent to parking lots to dissipate that flow.

**Marcia Parsons:**

Asked Staff if they could educate her on what pervious deck material may be out there.

**Staff Angela Rambeau:**

Stated there was a type of pervious concrete that looks like gravel and there may be a type of gravel base underneath that. She said she left it vague on purpose because there is a pool deck up against grass or whatever and the only problem with those types of surfaces is the maintenance is important. She said they really have to be maintained to get them to work and if you were next to grass or whatever, people walking and running back and forth, you would have a lot of grit, sand and dirt. She does not know what other types of systems were out there, but she knew about this particular one. She also thought about the possibility of perhaps gravel for the walking paths and then gravel paved surfaces also or grass pavers.

**Walt Rekuc:**

Said there is always debate about whether a pool is pervious or impervious because it absorbs water and it also allows water to evaporate so it can be pervious and impervious because water gets in there and it does not go anywhere, it retains it. He said he thought what was being said was that any of the pool deck or any of the impervious side, if it could be said that 50% of all surfaces within the 50 foot stream buffer shall be porous or pervious. Using porous material to allow infiltration - trying to come up with verbiage.

**Engineer Carter Lucas**

He stated if they just said some type of pervious pavement or pervious surface. He said again if the Board was comfortable with them working with the Applicant they could evaluate what they submit regarding that.

**Board discussion on how to words the pervious language in a motion.**

**Scott Kilgore:**

Withdrew his second to the motion.

**Walt Rekuc:**

Withdrew his motion and would like to restate another motion to the motion just voted on.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

Mr. Rekuc added to the motion:

- to place a 3 foot wide infiltration trench along the pool deck and all impervious areas within the 50 foot stream buffer;
- (2) 50% of the all impervious surface within the 50 foot stream buffer shall be a pervious surface.

Seconded by Gary Willis.

**City Attorney Ken Jarrard:**

Said for clarification, there is a motion that is based upon the Chair's motion that was denied. It is that motion, plus these two conditions.

**Chair Sandy Jones:**

Called for discussion. There was no discussion. Vote: 3-3, with Scott Kilgore, Gary Willis and Walt Rekuc voting for the motion and Sandy Jones, Marcia Parsons and John McRae voting against. Motion failed.

**City Attorney Ken Jarrard:**

Stated the Board had a couple of options. One option would be to sit here and continue making motions to either approve or deny until such time as this impasse could be broken, or the other option and again, he said he hated to say it, but to defer it until such time as there was an uneven number on the Board such that the tie could be broken.

**Chair Sandy Jones:**

Said which would be at their next meeting.

Discussion:

**Chair Sandy Jones:**

Stated the reason she changed her vote because she was not comfortable engineering a design for the Applicant when she did not have hydraulic conditions and any type of hydraulic data. She said the Applicant should be bringing that information and design to the Board or work with Staff to come up with the design.

**Scott Kilgore:**

Told the Chair he did not believe they were designing or engineering here, but putting conditions and leaving them open enough that the Staff can design and work with the Applicant. He said the reason he changed his vote is he felt there were enough conditions on it that they were now in harmony with the intent of the ordinance. They have mitigated the impact in his opinion to the point that they had protected the stream as best they can.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Gary Willis:**

Asked the City Attorney if they had to make another motion.

**City Attorney Ken Jarrard:**

Said they had to either make another motion to approve or deny the variance request or make a motion to defer.

**Motion and Second:** Walt Rekuc stated he would like to make the same motion as the Chair's previous motion, adding these two same motions and those two motions are:

- a three foot wide infiltration trench along the pool deck and all impervious areas within the 50 foot stream buffer and;
- 50% of all the impervious surface within the 50 foot stream buffer shall be of porous surface.

Gary Willis seconded this for the last time.

**City Attorney Ken Jarrard:**

Clarified that this motion was the same motion that was just previous stated and voted on and that it was just being voted on again.

**Chair Sandy Jones:**

Stated that was correct, it was verbatim.

Discussion:

**Chair Sandy Jones:**

Asked how the dimensions of 3 foot in width was determined for the infiltration trench.

**Scott Kilgore:**

Stated based on what Staff Carter Lucas suggested.

**Chair Sandy Jones:**

Said but Mr. Lucas also stated he had not evaluated the specific conditions of this site.

**Engineer Carter Lucas:**

Stated that typically 3 ft. was more than enough to accomplish what was being talked about in this situation and in many cases, could even be less than that used on conjunction with pervious surface should be sufficient.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Called for any additional discussion.

**John McRae:**

Stated his point was that he felt the plan was not conceived with the intent of meeting the existing ordinance. He said he did not feel that was considered when the plan was developed and his remedy would be to come back with a different plan that meets us half way, but he said he understood the time component that this is something he had been working on for a while and was sad to hear it had been 5-6 months in the process, but he said the only way he could in good conscience could set these types of conditions being discussed here were if they had a good plan to go off of to start from. He said he was not sure if there was any attempt to meet Milton's ordinances.

**Scott Kilgore:**

Said he agreed with him and that was why they put the conditions on the motion and that is typically what the Board does. He said they will say it cannot be approved as requested, but the conditions will be placed on it and in their opinion as a Board if they are met will make the variance into being in harmony. He said if he disagreed with that, then he should vote against it.

**Chair Sandy Jones:**

Stated that they also in some recent discussion as a Board and in consideration of how they review and address stream buffer variances, have stated that when they address a stream buffer variance that it is tied to a specific and discreet site plan and that variance would be applicable to just that site plan.

**Scott Kilgore:**

Said he agreed with the Chair but quite often when they are speaking of site plans the Board is talking about subdivisions where there are a lot of variables and seeing the site plan is necessary to know what is going on. He said he thought the Board understood what was going on here and the conditions are pretty specific. He said if the Applicant meets those conditions, then they have mitigated the impact to the stream, but you may or may not agree.

**Staff Angela Rambeau:**

Advised the Chair that in terms of the Applicant meeting with Staff, this was the second site plan he brought to Staff. The first plan had even more issues and he addressed those and brought it back and she felt that with the conditions that would get us where we needed to be.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Said because it was the exact same motion, she was not going to restate it, and would just call for a vote. There was no further discussion. Vote: 5-1, with John McRae voting in opposition. Motion passed.

**Chair Sandy Jones:**

Stated Staff would get for the Applicant the specific motion and requirements that the motion was approved by so those conditions could be addressed.

**Chair Sandy Jones** called the next variance request.

**V08-015, 15938 Manor Club Drive, Andre Hames**

**Staff Angela Rambeau** read the Petition and stated this variance request was for the following: To allow an accessory structure (a gazebo) to encroach into the side yard setback (Article 5.1.3.I). Stated the property was zoned AG-1 on 1.22 acres in The Manor Subdivision located in the NW Fulton Overlay. It is a single family home. Stated applicant ran into a problem with the golf cart path was moved by the developer. Said that the applicant did start construction without a permit and the city issued a stop work order in January of 2008, and instructed him to come in and apply for a variance. She stated that the applicant in the process of drawing up the site plans for the permit, he realized that the gazebo was in the 25 foot setback by a maximum 6 feet, 6 inches. She stated that Staff held a focus meeting on May 7th and the building plan review had no issues, the site engineer stated that the applicant should comply with all applicable erosion control measures, and that the area should be stabilized upon completion. The City Arborist stated that there were no specimen trees that appeared to be affected by this request. The DOT stormwater had no issues with the request.

**Staff's Recommended Conditions if Approved:** (1) The applicant shall pay all applicable penalty fees for starting construction without a permit; and (2) The applicant shall add additional landscaping to screen the gazebo from the golf course and adjacent lot.

**Applicant Andre Hames, 3195 Willow Close, Milton, GA**

Stated they paid a \$600 fine for the stop work order. He said regarding the buffer, they put 3 16 foot Blue Ice Cedars wrapped around the back and said he had plans to dry stack stone the entire facing of the fireplace. He stated it was actually a pergola and not as much a gazebo, because there was no shingle roof structure and it is just open true cedar beams that have been stretched across the area.

**Chair Sandy Jones:**

Asked if there were any questions for the applicant.

**Scott Kilgore:**

Asked if applicant was the builder of the home.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant Andre Hames:**

Stated he was the superintendent and that it was his and his father's building company.

**Scott Kilgore:**

Asked if the home immediately across the cart path occupied.

**Applicant Andre Hames:**

No, it is up for sale.

**Scott Kilgore:**

How many feet into the 25 foot setback?

**Applicant Andre Hames:**

Stated it was 6 feet, 6 inches.

**Walt Rekuc:**

Stated he had a question on his survey regarding a cross-hatched area below the sewer easement. He asked if that was the golf course.

**Applicant Andre Hames:**

Stated that was correct.

**Walt Rekuc:**

Asked applicant if he was proposing to put the building in the sanitary sewer easement.

**Applicant Andre Hames:**

Stated he was not.

**Walt Rekuc:**

Asked the applicant what the exact amount of feet was he asking to encroach into the side yard setback.

**Applicant Andre Hames:**

Stated 6 feet, 6 inches. He said 18 ft., 6 in. would be the minimum distance kept from the side yard setback instead of the 25 ft.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Asked if that included putting in the stone.

**Applicant Andre Hames:**

Said no, it was 5 inches for the stacked stone. He said no, he had to correct himself because the cedar was 4 x 8 beams along the outside and that is what was measured off of, so the stone would actually be right in line with that so it would not change that dimension actually at all.

**Walt Rekuc:**

Stated so the encroachment requested for the side yard setback would be 6 ft., 6 in. He said as far as screening it, he did not understand why screening would be important because it was right next to the golf course and the golf path. He said they need to screen you, not you screen them.

**Applicant Andre Hames:**

Stated they had some of the same feelings. He said initially they put a property pin in the back left corner and for whatever reason it was disturbed and replaced and when they boxed in that corner it was slightly off by somebody replacing it as close as it was when they removed it. He said upon that they put \$60,000 in landscaping on that house so it was very well buffered. It was done just 2-3 weeks ago. He stated the stop work order was just for the gazebo structure and not on the rest of the home.

**John McRae:**

Asked what the reason was for the gazebo not being shown on the original plans.

**Applicant Andre Hames:**

Stated this was actually a crossover and was actually with Fulton County so it was included with Fulton County, but there informal way of doing it was to include it with the fireplaces in the number of fireplaces and then include it on the site plan that was submitted to them in the original drawing, and they did not even require a separate permit for that, so when it got that stage when we were ready to built it, we built it and then upon that the erosion control inspector placed a stop work order and told us we needed a separate accessory shelter permit.

**Scott Kilgore:**

Asked if there were any erosion issues with the building.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant Andre Hames:**

Stated there was not, but there were several gazebos under construction in that particular development that did not have separate accessory structure permits because they were all done under Fulton and they were not requiring any permits so that was a common happening.

**Scott Kilgore:**

Stated there were hearing just the encroachment into the side yard and nothing to do with the permit. He asked if they had already received a permit.

**Applicant Andre Hames:**

Stated to get the okay for the encroachment would allow them to get the permit.

**John McRae:**

Asked did applicant say there were other gazebos in the same area?

**Applicant Andre Hames:**

Stated that was correct and that Officer Lewis did go and red tag all of them all within the same week and half period and they just happened to be one of those.

**Chair Sandy Jones:**

Asked if there were any other questions for the applicant and if there was any public comment. There were no other questions and no public comment. The Chair then closed public comment. The Chair asked if there were any questions for Staff.

**Marcia Parsons:**

Asked Staff if there was an additional fine requirement to the \$600 fine applicant already paid.

**Angela Rambeau:**

Said that was directly for the citation. She said when applicant comes in to apply for the building permit he would be charged double.

**Applicant Andre Hames:**

Stated he had already paid for the permit with Salisha and that was prior to having the side yard setback. He said he submitted the site plan for the permit when Officer Lewis advised him he needed the permit. He said he submitted everything and then after payment of the \$250.00 for the accessory permit, they came back and reviewed that it was in that side yard setback, so the payment was already made for the permit and then the other amount was for the stop work order which he also paid.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**John McRae:**

Asked Applicant if he would have to resubmit.

**Applicant Andre Hames:**

Stated he believed he just needed an addendum after the permit and approval and just add it on. He said if there is an additional fee for work prior to receiving a permit then that would be in addition.

**Chair Sandy Jones:**

Asked if there were any additional questions or comments. There were none. Called for a motion.

**Motion and Second:** Scott Kilgore moved to approve V08-015 to allow an accessory structure to encroach into the side yard setback, Article 5.1.3.1 based upon harmony with the intent of the ordinance which he believed was achieved by way of the 10 ft. cart path which provides an extra 10 ft. of side yard, giving a total of 28 ft., 6 inches side yard separation and the intent of the ordinance is separation of structures which he said he believed was achieved merely by the presence of the cart path. He stated he believed harmony was also achieved based on the mitigating actions that the applicant has taken to screen the structure from the view of the future neighbors. Seconded by Marcia Parsons.

Discussion:

**John McRae:**

Asked if Mr. Kilgore included the recommended conditions. He said he did not hear anything about the fines being paid and the screening should be added.

**Scott Kilgore:**

Stated he believed the applicant had already added additional landscaping and he did not include that in the motion, simply because he did not see a need to screen it from the golf course. He said he did not think they needed to include the payment of penalty and fees because the city enforces that so would not need to be a condition of approval.

**Chair Sandy Jones:**

Stated there was a motion and a second on the floor. Asked if there was any other discussion. There was no further discussion. Vote: 6-0. The motion unanimously carried.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones** called the last variance request.

**V08-016, 815 Tramore Place, Randy Fennema**

**Staff Angela Rambeau** read the Petition and stated this variance request was for the following: 1. to allow a private recreation court to encroach into the rear yard setback (Article 19.3.8.1). Stated the applicant had built a half basketball court in the minimum rear yard of his property about 5 feet from the property line. Applicant has also purchased a green plastic grid overlay system designed to reduce noise and to allow the concrete court to blend in with the surrounding landscape. Applicant stated at the time of construction he was not aware that the zoning code requirements for private recreation courts which prohibit private recreation courts in the minimum rear yard, or the requirement of a building permit for such courts. She stated applicant plans to also install a wooden privacy fence to match the existing fence and additional landscaping in the back yard.

**Staff's Recommended Conditions if Approved:** (1) Applicant shall install fence per permit; (2) Applicant shall complete landscaping per permit; and (3) Applicant shall install overlay grid on concrete court.

**Applicant Randy Fennema, 815 Tramore Place, Milton, GA**

Reviewed his photos presented to the Board. The Applicant read for the Board from his notes and stated:

- No permit is required for the installation of a recreational court and the concrete company did not mention any potential setback issues with him nor had they experienced any such problems in their many years of constructing courts;
- He did not know what a setback was until this issue came up;
- Day of the court construction when the court was approximately 2/3 complete, he received two independent indications from city officials that there was no problem with the court being constructed and that it could be completed;
- He received a signed letter of full support and approval from his right side neighbor, who is the only neighbor that could see the court from her house;
- The accompanying satellite photo shows the large distance between Mr. Foster's house and the court;
- Mr. Foster will approach and tell his side of the story;
- The satellite photo also shows the thick forest of trees that separates the two properties;
- Believes the photo addresses any questions about noise or light spillage;
- He had a substantial investment of over \$10,000 in the court and having to destroy and rebuild it in another location which cost applicant an extra \$7,000 and force him to remove about 8 trees and delay the completion of the back yard for an extra month;
- The court's location benefits from daytime shade which cannot be duplicated in any other location. He said daytime shade is highly desirable in order to enjoy the investment to its fullest;
- He believes the complaint is coming from a habitual complainer;
- Offered the following paraphrases from 3 different people in order to bring to light that Mr. Foster has a history of causing grief for people;

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

- Mr. Foster has called the police on multiple occasions when construction workers started work prior to 7:30 a.m. as stated by Milton Jones, the builder of my house;
- Police officers have more important things to do than jump whenever Mr. Foster decides his life is not perfect;
- A neighbor almost moved because of the grief Mr. Foster caused as stated by his neighbor, Ellen Cooper;
- Mr. Foster calls me all the time as stated by Mr. Lewis, the City of Milton Code Enforcement Officer;
- The photo showing the back of Mr. Foster's backyard shed is a good example of the hypocrisy of his position. The shed is directly behind a 1.2 million dollar house and yet he has the audacity to look beyond his own borders for problems with his neighbors;
- The attached photo rendition of the final project which is accurate to scale, demonstrates my commitment to blend in to the natural surroundings with the green grass color and the court will be similar to the color of Georgia dirt;
- Stated extensive landscaping will be installed as shown in the picture.

**Chair Sandy Jones:**

Asked if there were any questions of the applicant.

**Gary Willis:**

Asked about the installation of court lights.

**Applicant Randy Fennema:**

Said he would like to install lights, but did not know about the codes.

**Scott Kilgore:**

Asked how much of an encroachment into the rear yard setback was there. He asked if there was any way the court could be pulled in and be within the setback without getting into the pool, but it did not look like that could be done.

**Applicant Randy Fennema:**

Stated the setback was 50 feet, so it was fully within the setback. The area that the court is was the most ideal location because of the shading and the other area that would not be true.

**John McRae:**

Asked how long applicant had been in his home and if the pool was existing at that time.

**Applicant Randy Fennema:**

Stated about 2 1/2 years and he built the pool.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**John McRae:**

Stated he had to get a pool permit but was not aware that he would have to get a permit for a basketball court.

**Applicant Randy Fennema:**

Stated you do not need a building permit.

**Staff Angela Rambeau:**

Said you do not need a building permit, but you need an admin permit.

**Walt Rekuc:**

Asked what section of the code he was actually violating.

**Staff Angela Rambeau:**

Stated it was not the standard setbacks, but in the back about the admin setback, Article 19.3.8.1, all the way in the back. She said there was a specific admin permit required for a private recreational court.

**Walt Rekuc:**

Asked Staff what the distance was it had to be off of the property line.

**Staff Angela Rambeau:**

Stated it did not give a distance for being off of the property line, but just says it has to be out of that minimum rear yard. It has to be in the rear or side yard, but out of the minimum rear yard. She said the minimum rear yard is AG-1 was 50 feet.

**Board discussion looking at applicant's photos.**

**Scott Kilgore:**

Asked how the neighbor to applicant's right felt about the court.

**Applicant Randy Fennema:**

Stated that neighbor gave her approval by letter and that was submitted with his application.

**Scott Kilgore:**

Asked if the neighbor knew about any lights that may be coming right in their back window.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant Randy Fennema:**

Stated that the lights were not discussed.

**Chair Sandy Jones:**

Asked if there were any questions for the Applicant. Asked if there was any public comment.

**Anice Foster, 13635 Birmingham Highway, Milton, GA**

Stated he resided at that location for over 20 years and was not going to lower himself to Mr. Fennema's character assassination. He stated there were 5 houses in their neighborhood and most of the time everyone gets along very well. Mr. Foster stated everyone knows where the boundary lines are. Mr. Foster read his statement to the board:

- Morning of March 6, 2008 he noticed a bobcat close to his property line performing construction
- The address was 815 Tramore Place.
- He said he walked to the site and found a large form that was reinforced and tied with rebar and was approximately 3 ft. off of his fenced property line and has photos.
- He questioned the workers about what they were doing and they said they were building a basketball court.
- I advised that there was a 50 ft. setback and he could not build anything closer than 50 ft. from my property line.
- The man said I do not know what you are complaining about as there was a good distance from my house.
- I asked him if he had a building permit for the pad and he said maybe I do and maybe I do not.
- I repeated several more times that he was in violation of the 50 ft. setback.
- He told me not to worry because that was considered to be part of his driveway and that Milton had given him the okay.
- I told him that the pad had nothing to do with his driveway and he needed a permit to do what he was doing.
- He demonstrated by his actions that he did not care what I was saying and I said I was calling the City of Milton to handle the matter.
- I was put in contact with Issac Lewis, the Code Enforcement Officer. He came to the location in about 20 minutes.
- I showed Mr. Lewis the site and walked the area and I showed him the pad.
- He asked the man what he was doing and the man repeated basically the same information as he had to me.
- Issac took picture of the form pad that was tied with rebar and later turn out to be about 6-8 inches thick.
- Issac indicated he could handle the matter from that point.
- Before Issac left, he posted an orange sign on the building that the man had under construction which I believe was a stop work order notice.
- The next morning Issac stated he had issued the stop work order under Section 19.3.8.1.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

- He stated he had the opportunity to stop after being advised about the 50 ft. setback, but he chose to ignore me.

**Mr. Foster:**

Stated he believes if the variance is allowed for the construction pad that it would impact his property value and be a foundation that a building could be constructed on now or sometime in the future and also would open the door to other property owners to do exactly the same thing to other property owners whether it be a tennis court, swimming pool, or whatever else they chose to do. It would also set an example to anyone in the City of Milton to do exactly the same thing. He asked that the variance be denied. He stated he also had a concern that where the pad is located is also where the septic tank was located.

**Gary Willis:**

Asked if the concrete was poured prior to or after the stop work order was issued.

**Mr. Foster:**

Stated at the time he saw the stop work order, the concrete was not poured. He had to use a bobcat to take the concrete from the truck down to the pad. He said he found out later that the stop work order was not for the variance but for the swimming pool and the other tiki huts that the man had been building there. He said there is a responsibility when you own property. You cannot just say you do not know something and do what you want to. He said his shed had been there way before anyone else was there and would probably be there after they are gone. He said the basketball court was right on his property line.

**Walt Rekuc:**

Stated he had 3 subdivisions built all around his house and understood his frustration when the development starts occurring around us. He stated things usually get better in time. He told Mr. Foster that from the aerial photo it looks like the court is a good distance from his house. Mr. Rekuc asked if the scale was accurate.

**Mr. Foster:**

Stated the problem he primarily had was not necessarily the distance from his house, but just the fact that he knew exactly what he was doing and the point is there was a 50 ft. setback and you cannot build anything in it. Mr. Foster said he had honored that over the years and he relies on the laws to protect him.

**Walt Rekuc:**

Stated their job was to now review the matter and see what can be done to look at the situation and come up with a solution.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Chair Sandy Jones:**

Asked if there were any additional public comments. Asked the applicant if he wished to make a rebuttal statement.

**Applicant Randy Fennema:**

Stated he believed Mr. Foster was trying to lead you to believe there had been some type of citation prior to the completion of the court, which was not true. He said on the date the court was constructed, he got two green lights from the city to go ahead and complete the court. There was no stop work order. He stated when Issac came by he asked if there was a permit for the gazebos and there were not. They had been started before Milton was a city and that was why the cease and desist was put on the gazebos that had been completed a year prior, so that is what the orange signs were about. He stated the cease and desist order was not for the concrete pad. The applicant stated he called and spoke with someone at the city and told them about the building of the court and the city personnel asked some questions that were answered like was it near a river bed or a stream and some general questions.

**John McRae:**

Asked what phase of construction was applicant at then.

**Applicant Randy Fennema:**

Stated it was about 2/3 of the way complete. The concrete only took about one day. He stated after asking a number of questions, that he did not see any problem with what was being done. Applicant said he told Issac that and asked what he determined and said he did not see a problem there and he left.

**Applicant Randy Fennema:**

Said at the 2/3 of the concrete being poured.

**Gary Willis:**

Asked if he had any receipt to show the date the concrete was delivered compared to the date that Issac was there.

**Applicant Randy Fennema:**

Said he could probably get it, but it was a one day project. He said that Issac saw how much was done.

**Scott Kilgore:**

Said he realized the spot he chose is the when applicant wants, but was there any reason other than the shade it could not be located in the other place. Also wanted to know if it would be possible to shade with an artificial structure.

**Applicant Randy Fennema:**

Stated the neighbors would probably not be okay with that and then it becomes a structure. He said it is just a basketball and Mr. Foster cannot see it. There is a fence there now. The applicant said some of the negatives of the other location would be it would be closer to his other neighbor on the other side and also would be closer to Mrs. Cooper's house so technically the current location would be the best place to be as far away from as many people as possible.

**Board discussion about location of court viewing photos.**

**Walt Rekuc:**

Asked applicant what he had proposed in reference to his landscape plan. He said the photograph did not really show anything.

**Applicant Randy Fennema:**

Stated he was willing to do whatever anybody wants as far as landscaping. He said his whole yard was a big investment and he did not want to be cheap.

**Chair Sandy Jones:**

Asked about the location of his septic system from the site plan.

**Applicant Randy Fennema:**

Stated it was his understanding the septic system was in front of the court. He said the court was back far enough. He said he also took that into consideration when he positioned the court. He said he measured it and felt comfortable that he was not encroaching on it.

**Walt Rekuc:**

Said he was concerned about screening the area he was encroaching into, the side and rear yard. He said the intent of the ordinance is for what? Why would you want to keep that court away from the side property line? It is basically to prevent problems with your neighbors. There could have been more trees there if the court was not there to begin with.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Applicant Randy Fennema:**

Stated there was actually a forest behind his property.

**Walt Rekuc:**

Asked applicant what kind of trees were there.

**Applicant Randy Fennema:**

Said you cannot see Mr. Foster's house looking through the forest during the summer.

**City Arborist Mark Law:**

Stated there were mostly hardwoods. Photos were provided to the Board to review.

**Chair Sandy Jones:**

Asked if there were any other questions for the applicant.

**Scott Kilgore:**

Asked from the photograph, which neighbor was okay with the court.

**Applicant Randy Fennema:**

Approached the dais and pointed the neighbor's house out to Mr. Kilgore.

**Chair Sandy Jones:**

Stated they needed to close public hearing first. She thanked the Applicant and stated if there was no other public comment the public hearing was closed.

**Walt Rekuc:**

Asked Staff if they got permission and whether Issac really did go out and say everything was okay.

**Staff Angela Rambeau:**

Stated she was not honestly sure. She said she knew there had been some phone calls back and forth, but did not know what the calls were about. She said she thought they were questions about whether a building permit was needed, but no exactly sure what the whole context was about.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Walt Rekuc:**

Stated at some point somebody had to be sure about a decision and this case had to come before us. He asked how long of a period of time that was from March 6th and now.

**Staff Angela Rambeau:**

Said she did not remember exactly how they figured it out. She said she thought they determined he did not need a building permit but in talking with other staff members we realized there was a condition in there for the admin permit for the courts and with that there were certain requirements there. She did not think any of them were aware of that at the time that Issac was out there on the site.

**Marcia Parsons:**

Asked if Code Enforcement has site visit reports as part of their protocol when they site inspections or site visits.

**Staff Angela Rambeau:**

She thought they did.

**City Attorney Ken Jarrard:**

Said you would anticipate the city doing a field report, but whether or not it would contain a narrative of that particular visit, it would be tough to say.

**Gary Willis:**

Asked Staff about the lights and what the city's rules and regulations were about putting lights up on a basketball court in a neighbor like this one.

**Staff Angela Rambeau:**

Stated the ordinance did not address lights in that particular area and she was not familiar enough with the night sky ordinance.

**Walt Rekuc:**

Said in communities he had a part in, he used tennis court lighting for his basketball courts. Those are shoebox figures and they have a delineation of the light so it is going down, but does not mean you cannot see it from afar if you are in a lower topography.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Staff Angela Rambeau:**

Stated any light that was installed would have to be self-contained and the light would have to shine down on the property.

**Gary Willis:**

Asked if there was a height limit as well regarding the lighting.

**Staff Angela Rambeau:**

Stated she would have to look that up.

**Walt Rekuc:**

Stated there might be a problem because the light has to be on the property if it is so close to the property line, you have to be really careful.

**Chair Sandy Jones:**

Asked if there were any other questions for Staff.

**Walt Rekuc:**

Asked Staff why there was a 50 foot rule on these courts and what was the reason.

**Staff Angela Rambeau:**

Stated for protection of the neighbor and also something to think of is pool decks, patios, and that sort of thing can encroach into the rear yard up to 10 feet from the property line, so if applicant had attached the court to his pool deck, he still would be in violation, but he could get into that back rear yard. She said she did not think the intent was necessarily to keep any kind of pavement out of the yard, but protecting the neighbor from the use.

**Scott Kilgore:**

Said because it was a recreational use and generates noise and lights so it is to separate it from the neighbors.

**Staff Angela Rambeau:**

Stated she could not find anything addressing lighting for a private recreational court. She said there are lighting standards for commercial developments, but for something like this, she was no aware of anything.

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Marcia Parsons:**

Asked Staff if it could possibly be under anything about outdoor lighting restrictions around pool areas or general outdoor lighting.

**Staff Angela Rambeau:**

That section talks about fixtures, illumination allowances, offsite spills, containing decks, and it does say that any light poles shall be set back the greater of *50 feet or one foot for every foot in height from any residential property line or right-of-way.*

**Gary Willis**

Told applicant he could not put lights up at that location as he only had 3 feet.

**Board discussion about distance of lighting and direction of lighting.**

**Chair Sandy Jones:**

Asked if there were any other questions for Staff. Called for a motion.

**Motion and Second:** Scott Kilgore moved to deny V08-016 to allow a private recreation court to encroach into the rear yard setback, Article 19.3.8.1, on the following bases. He stated he did not see a hardship in this case, as the lot is large and there is clearly another place that the court could be built. He said it may not be ideal, but it would be within the building setbacks and so lack of hardship, very weak on the harmony end. He said yes there was a fence and there is screening, but he stated he did not think that did a lot to mitigate the encroachment into the setback that is in place to protect the neighbors and it is right up on the property line, so his motion is to deny based on lack of hardship and lack of harmony with the intent of the ordinance. Seconded by John McRae. There was no further discussion. Vote: 6-0. Motion to deny unanimously carried.

**ADJOURNMENT**

There being no further business, the Chair Sandy Jones moved to adjourn the Board of Zoning Appeals meeting for May 20, 2008. Seconded by Gary Willis. There was no discussion. Vote 6-0. The motion to adjourn carried unanimously.

Meeting adjourned at 12:50 a.m.

Date Approved: \_\_\_\_\_

---

Francesca Ivie  
City Clerk's Office

---

Chair, Sandy Jones  
Board of Zoning Appeals

**Board of Zoning Appeals  
Regular Meeting  
May 20, 2008**

**Marcia Parsons:**

Asked Staff if it could possibly be under anything about outdoor lighting restrictions around pool areas or general outdoor lighting.

**Staff Angela Rambeau:**

That section talks about fixtures, illumination allowances, offsite spills, containing decks, and it does say that any light poles shall be set back the greater of *50 feet or one foot for every foot in height from any residential property line or right-of-way.*

**Gary Willis**

Told applicant he could not put lights up at that location as he only had 3 feet.

**Board discussion about distance of lighting and direction of lighting.**

**Chair Sandy Jones:**

Asked if there were any other questions for Staff. Called for a motion.


**Motion and Second:** Scott Kilgore moved to deny Vo8-016 to allow a private recreation court to encroach into the rear yard setback, Article 19.3.8.1, on the following bases. He stated he did not see a hardship in this case, as the lot is large and there is clearly another place that the court could be built. He said it may not be ideal, but it would be within the building setbacks and so lack of hardship, very weak on the harmony end. He said yes there was a fence and there is screening, but he stated he did not think that did a lot to mitigate the encroachment into the setback that is in place to protect the neighbors and it is right up on the property line, so his motion is to deny based on lack of hardship and lack of harmony with the intent of the ordinance. Seconded by John McRae. There was no further discussion. Vote: 6-0. Motion to deny unanimously carried.

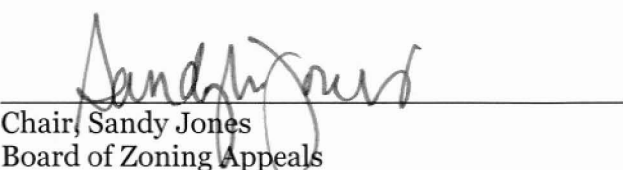
**ADJOURNMENT**

There being no further business, the Chair Sandy Jones moved to adjourn the Board of Zoning Appeals meeting for May 20, 2008. Seconded by Gary Willis. There was no discussion. Vote 6-0. The motion to adjourn carried unanimously.

Meeting adjourned at 12:50 a.m.

Date Approved: 8/19/08

  
\_\_\_\_\_  
Francesca Ivie  
City Clerk's Office

  
\_\_\_\_\_  
Chair, Sandy Jones  
Board of Zoning Appeals