

MINUTES

**City of Milton Board of Zoning Appeals
Regular Meeting
August 19, 2008 7:00 PM**

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

CITY STAFF: Angela Rambeau, Community Development
Matt Zyjewski, Community Development

AGENDA:

VARIANCES	
<i>Agenda item/Location/ Applicant</i>	<i>Request(s)</i>
1. Call to order and pledge	
2. Approval of May and July meeting minutes	
3. V08-018 765 & 785 Broadwell Road Sally Rich-Kolb	<ul style="list-style-type: none">To reduce the number of required parking spaces (Article 18.2.1) REQUEST WAS WITHDRAWN
4. V08-021 15385 Treyburn Manor View Chris and Marcia Sanna	<ul style="list-style-type: none">To allow an outdoor fireplace to located in a side yard (Article 4.3.4.B.2)
5. V08-022 2985 Manor Bridge Drive Elliott Smith	<ul style="list-style-type: none">To allow an accessory structure (a storage shed) to encroach into the rear yard setback (Article 5.1.3.I) STAFF WILL REQUEST DEFERRAL
6. Other business	
7. Adjournment	

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MEETING CALLED TO ORDER

Chair Sandy Jones called the meeting to order.

PLEDGE OF ALLEGIANCE

INTRODUCTION OF BOARD MEMBERS

STATEMENT OF THE BYLAWS OF THE BOARD OF ZONING APPEAL

Read by the Chair Sandy Jones.

APPROVAL OF MEETING MINUTES

Motion and Second: Sandy Jones made a motion to approve the May 2008 Board of Zoning Appeals meeting minutes. Marcia Parsons seconded the motion. There was no discussion. Vote: 6-0-1, with Todd Chernik abstaining as he was not in attendance at the May 2008 BZA meeting. The motion carried.

Motion and Second: Sandy Jones made a motion to approve the July 2008 Board of Zoning Appeals meeting minutes. Todd Chernik seconded the motion.

Discussion:

Walt Rekuc: Asked if all the corrections had been made to the July 2008 meeting minutes and was advised by City Clerk's Office staff they had.

Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones called the first primary variance, **V08-018**, 765 and 785 Broadwell Road. Said she understood the applicant had requested that this variance request to be withdrawn.

Staff Angela Rambeau stated that was correct.

Chair Sandy Jones called the next variance, **V08-021**, 15385 Treyburn Manor View. Asked Staff to present the case.

Staff Angela Rambeau stated that Staff's intern, Matt Zyjewski, would be presenting the case.

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Staff Intern Matt Zyjewski presented case **V08-021**, stating this case was a petition to allow an outdoor fireplace to be located in a side yard. The site is located in the White Columns Subdivision and zoned AG-1 and located in the NW Fulton Overlay District. Article 4.3.4.B.2 requires outside structures as this to be located in the rear. Applicant is requesting a variance be approved to allow the structure to remain in its current location. Applicants state they were under the assumption the fireplace was constructed in the rear yard rather than the side yard. They contend that the fireplace is located in its present location due to the topographical nature of the backyard and septic system limitations. They believe the fireplace is in harmony with its surroundings and causes no detriment to the neighbors. Staff notes that the adjoining property owner has stated that the smoke from the fireplace blows into their yard and aggravates their son's asthma. Staff held a focus meeting on August 6, 2008. The Building Plan Review stated the fireplace appears to meet code and a gas starter may help reduce the amount of smoke and gas logs would be the only way to eliminate the smoke. Site Plan Review had no issues. The City Arborist stated no specimen trees appear to be affected by this request and DOT Stormwater Review had no issues. Regarding standards for consideration, the applicant has indicated a justification for variance based on the following standards: The application of the particular provision of the zoning resolution to a particular piece of property due to extraordinary and exceptional conditions pertaining to that property because of its size, shape or topography would create an unnecessary hardship for the owner while causing no detriment to the public. In addition to constructing the fireplace, the applicant had a pool and deck constructed in the home's rear yard. The topography of the yard limits the placement of the fireplace. Staff has recommended the following conditions should the Board choose to approve this application: (1) the applicant shall obtain a building permit for the fireplace and pay all applicable fees and penalties for starting construction without a permit; and (2) the applicant shall install a gas starter to the fireplace to minimize smoke during the lighting of the fireplace.

Chair Sandy Jones called the applicant forward to present his case.

Applicant Chris Sanna, 15385 Treyburn Manor View, Milton, GA:

Applicant apologized for this happening and stated they did not realize they were building in a side yard and that was the mistake that was made. It was moved to the side based on their findings with the leech lines from their septic field. Pool had to be moved over 8-10 feet. If the fireplace was kept in the boundaries it would have been right into the pool. Stated his wife has been going through breast cancer treatments and the fireplace was a gift to her. Introduced his pool and fireplace contractor representative, Meghan Rice of Aqua Design Pools and Spas.

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Meghan Rice, Aqua Design Pools & Spas, 70 Sheridan Drive, Atlanta, GA:

Advised the Board they were the designers and builders of the swimming pool and the fireplace. Stated the fireplace was originally intended to be part of the entire project. Have since applied for a building permit and are prepared to pay all fines for starting construction without the permit. She said all the documents have been submitted with the site plan indicating the location of it. She said they were under the impression it was in the back rear yard so that was an honest mistake. She said it only extends a few feet past the house and is very much in aesthetic harmony with the rest of the neighborhood, his home and the entire pool project. She said they are well within the setbacks for an outdoor fireplace if it were just a few feet over.

Applicant Chris Sanna said they would be willing to do whatever the board has suggested regarding the gas fire starter. There have been one or two fires with it just to see if it would work.

Chair Sandy Jones asked the Board if they had any questions for the applicant.

Walt Rekuc asked Meghan Rice what amount of variance she was asking for the fireplace.

Meghan Rice stated the variance was just to allow the fireplace to be in its current location which is classified as the side yard.

Walt Rekuc asked what the distance was.

Applicant Chris Sanna said 22 ft. 7" from the lot line and about 10 ft. from the side of the house.

Walt Rekuc said that is in the side yard setback by how many feet? The side yard setback is measured from the side property line into the property. He said he believed from Staff that the measurement was 25 feet.

Staff Angela Rambeau stated the side yard setback was 25 feet.

Walt Rekuc said so you are 2 ft. 5 " into the setback. You are also stating in your application that there is a septic field issue. Mr. Rekuc asked the applicant to show him on the site plan the location of the proposed septic field would be that is in conflict with why he cannot be located in another location.

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Meghan Rice stated she did not bring the septic plat with her. Said it was on file with their original application and they did go through the entire health department approval for the entire project.

Walt Rekuc asked if they tabled this case and let them come back would that be something they would have.

Applicant Chris Sanna said they had asked for an accurate drawing and that is what they went from when they bought the house. The people that put in the septic field provided the drawing.

Walt Rekuc said you are basically saying that your hardship is due to the topo and septic field. Are those the only two reasons for why the fireplace is located where it is? Is there some builder error involved as well?

Meghan Rice stated they did believe they were placing the fireplace in the rear yard so there was an error there.

Walt Rekuc said you also state that your homeowners' association has approved this plan.

Applicant Chris Sanna stated they did not approve the plan. He said he did get a notice back after applying for the variance that they were waiting to see how the board decided.

Walt Rekuc said so they have not approved or disapproved it as of yet. Also, as far as your neighbors are concerned (two neighbors) that adjoin you, have you spoken with both of your neighbors and have they concurred with this matter.

Chair Sandy Jones **Chair Sandy Jones** called for public comment.

Attorney Valerie Wuff Sherman, 12540 Broadwell Road, Suite 2202B, Milton, GA

Stated she was representing Lisa and Carl Roberts, the applicant's neighbors who reside at 15395 Treyburn Manor View. Their house is immediately adjacent to the fireplace in question. They object to the granting of this variance and request that the Zoning Appeal Board deny the Sannas' application in all respects.

Ms. Sherman stated that the Roberts' objections were as follows:

The City of Milton's Code specifically prohibits fireplaces in side yards. The fireplace would never have been approved by the Zoning Board where it currently exists. The

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zoning ordinance in questions is Section 4.3.4 B2: "Outdoor fireplaces and outdoor uncovered kitchens, whether standing alone or constructed as a part of a patio, retaining wall or other structure, may only be located in the rear yard and may extend no more than 10 feet into the minimum rear yard."

The Sannas never sought prior approval from either the City of Milton or their homeowners' association for the fireplace, and so made an uninformed choice as to its position. If they would have made property applications, as all citizens of Milton are required to do, they would have been informed about the codes and the appropriate placement. To change the fireplace's position prior to building is an easy fix. Instead, they chose to act on their own, and are now seeking to be made an exception. If the Zoning Appeal Board makes an exception because the offending structure is already built, it sets an incredibly bad precedent for the rest of the city and it risks a snowball effect of people building whatever they want, wherever they want, wherever they want and then applying for approvals after the fact.

The Sannas fail to present a reason why the fireplace could not be located in an area that is legal under the code. Their property is one acre in size and they have an area of trees at the rear of their property as well as other green spaces. These areas are not shown in the pictures or the survey they submitted so the Board is not seeing an accurate representation of the Sannas' yard.

There are several inaccuracies in the plan the Sannas submitted to the Zoning Board. They submitted these inaccurate plans to both the City and the HOA. The "survey" is not from a survey company, but rather hand drawn, not to scale. They reference a future cook top next to their deck, never a fireplace. The pool equipment is not located properly. The deck is not drawn wide enough. It is much larger than shown on the survey, which brings into questions whether a permit was issued for the deck as it exists. The pool is not located properly on the survey, but is shifted left, closer to the Roberts' home and is not the referenced distance from the property line. It appears that they not only shifted the pool to the left but also approximately 50 feet back from their house from the plan they presented. The green areas around their patio are drawn in the survey much smaller than they are in reality; there is a large grassy area between the deck and the patio. The fence is not located correctly on the survey.

My clients, in an attempt to decrease the impact of the fireplace, chose to invest \$5,000 in landscaping. Now, it appears from the pictures that were submitted by the Sannas to the Board, that the Sannas are using that landscaping to persuade the Board that the fireplace's is limited and in harmony with the neighborhood. In fact, it is not. The Sannas have made limited attempts at screening the fireplace.

Ms. Sherman presented a picture that her clients took for other reasons that show the area before her clients planted cover.

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If you examine the fireplace pictures, they show the proximity to the Roberts' playground. This playground has been at its location for ten years. A fireplace should never be located so close to where children play. The children should not have to stay inside when the chimney is lit because the fireplace is located too close to the side property. The Sannas did not put the fireplace next to where their children play, locating it opposite of their children's play equipment. They placed it very near the Roberts' children's play area. The Sannas also did not place the fireplace where the smoke would blow into their kitchen windows so that they cannot open their windows when the chimney is lit. This is not a safe environment.

Ms. Sherman asked the Board to examine the several pictures presented.

The Sannas have chosen pictures taken from above and from angles which include the maximum tree coverage. Remember that these pictures are shot in the summer with maximum foliage. Most of the trees in the pictures will lose their leaves. These trees do not sit between the Roberts' house and the fireplace, but rather are at the rear of the year of the yard. A wooded barrier would help in screening rising smoke. Unfortunately, there simply is not enough space or non-seasonal trees to provide an effective screen to protect the Roberts' play area, side of house, and only rear door. There is not a wooded buffer between the Sannas' home and the Roberts' home. Further, the fireplace is very tall, and extends above most of the planted foliage.

My clients never authorized the Sannas to come on to their property to take pictures. The Sannas claim that the photos were taken from the sidewalk next to the Roberts' home. As the Roberts' backyard sits on a hill, the only way these photos could have been taken would have been to be on a ladder propped on the roof of a car, and even then, I am not sure how they could get the pictures that they did.

There was no topography map submitted to the Board. There is no reason presented why a fireplace could not be located on higher ground, or why a 7 foot variation in elevation effected the placement of the fireplace. Once again, there appear to be other, legal places for the fireplace. Septic issues do not seem to be relevant.

There does not appear to be a permit for the fence on file with the County of Fulton. One again, it appears that the Sannas have provided inaccurate information to the City of Milton and obtained a pool permit. There is also a refrigerator and grill, probably with accompanying utilities, all located in the side yard next to the fireplace.

Lastly, the While Columns Homeowners' Association has denied the Sannas' application for the fireplace.

Ms. Sherman stated they are asking that the Board deny the Sannas' application in all respects.

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Walt Rekuc stated he understood her points but thought she was misreading what he was reading under 4.3.4B(2), it says porches, decks or patios attached to the main dwelling may not extend more than 10 feet into the minimum front or rear yard. It states the outdoor fireplaces or outdoor uncovered kitchens whether standing alone or constructed as part of a patio...may only be located in the rear yard and may extend no more than 10 feet into the minimum rear yard, so it could be 40 feet from the property line, not just 50 feet. It does not say anything about its relationship to the side yard.

Attorney Valerie Wuff Sherman said it says specifically in that statute that a fireplace may only be located in the rear yard. If you say that this fireplace may now be located in the side yard, then you set a precedent.

Walt Rekuc asked about her client's playground and what distance that was it away from the side property line and asked if she had that dimension.

Attorney Valerie Wuff Sherman stated she did not have that dimension but it had been approved by the HOA twice so it is appropriate under the HOA rules.

Walt Rekuc said just wanted to make sure they were considering both things and will address some of his questions to staff later.

Chair Sandy Jones asked Ms. Sherman about the small shrubs that she stated the applicant had planted and whether those were the Leyland Cypresses and were on the applicant's property line.

Attorney Valerie Wuff Sherman stated they were immediately adjacent to the fence.

Chair Sandy Jones asked Ms. Sherman if she knew how tall they were.

Attorney Valerie Wuff Sherman said they were shorter than the fence.

Chair Sandy Jones said they must be looking at two different photos. She asked Ms. Sherman if she had been to the property.

Attorney Valerie Wuff Sherman said they were just over the fence.

Chair Sandy Jones said the pictures presented had showed that the trees were significantly taller than and almost as tall as the top of the chimney. The Chair asked Ms. Sherman if she had a copy of the letter from the HOA.

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Attorney Valerie Wuff Sherman said she did have a copy but was not sure it was in her file. She said she could provide to the Board later this evening, but did not have it with her right then.

Neighbor, Carl Roberts, 15395 Treyburn Manor View, Milton, GA

Came up to the podium and stated that in regard to the playground, it had been approved twice by White Columns. He said when the playground was approved for the first time they were under Fulton County Ordinances and the ordinance said 10 feet from the property line. It was his understanding they were grandfathered in because they did comply with the Fulton County Ordinances. Also, as far as all of the shrubs they were talking about, the Leylands that are directly adjacent to his fence are his and everything else is theirs. They planted the shrubs not just to screen the fireplace, but to provide privacy for both the Sannas and themselves because they had a pool and in the beginning there was not one ounce of screening there for the pool. Mr. Roberts said that the big Leylands indicated on the right of the small were the Sannas', but they are not anywhere near the fireplace. He stated if the Board needed an approval letter they can provide it from White Columns. Mr. Roberts stated it goes to the point of fairness and to following the rules. He said there is no ignorance to the law and that the Board knows that. Mr. Roberts continued that it was past the point of compromise and it was said that it had reached that point and said that communication could not go back and forth. He said he had four small boys, ages 2, 9, 8 and 7 and when the fireplace is lit, they are smoked out and that was the bottom line. He said one time on Halloween when the fireplace was lit, they could not even open their back door. Mr. Roberts said it goes to the statute they were talking about. It is not supposed to be on a side yard for a reason. Maybe not just for smoke, but maybe for noise as well, but it is supposed to be in the back yard.

Mr. Roberts said for the pool company to sit here and say they did not know they needed to go to Milton to get a permit, he did not buy it. He said he is a business owner and employs a lot of people and you have to follow the rules. If you do not follow the rules you get in trouble. He said he was involved in businesses that move money worldwide. He said they have to be tax law compliant. We cannot say we did not know the rules because they would not accept that and we would be punished. It is up to us as a company to know the rules when you do something. If you have a successful pool company and you built many pools in many places and you go into an unknown city which is the newly formed Milton, for you to not go to the Board and ask what is the process is unconscionable. He said it is not good business for the Milton to grow as a city. He stated he reads all the time about sewers. We have Deerfield Parkway and as far as he knew they were not allowing sewers in there, but the sewers can be connected to Alpharetta to allow for development but Milton is saying no because they do not want to set a precedent. He stated he would think that same type of logic should apply here. He said it is bad when two neighbors get into

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an argument and it gets to this point. He said their disagreements are their disagreements, but the ordinances are the ordinances and that is the bottom line.

Mr. Roberts said they are not saying they should not have a pool or a fireplace, but go through the procedures and go through the HOA first. They would have probably told them no. The Planning Commission and the permitting department would have said no, but they chose not to learn about the ordinances and it is not his fault and maybe not even the Sannas' fault, but it sounds like it is the pool company's fault.

John McRae that the reasons Mr. Roberts cited were the smoke, noise, visual impact and asked to what extent would that be alleviated if the fireplace was compliant with the rear yard criteria.

Neighbor, Carl Roberts said if it was built in the right place he has no say. He stated he would probably still not like it, but he would not have a say in it. If it is in the ordinance then that is that.

John McRae asked Mr. Roberts if his issue was more with the fireplace or the pool as well.

Neighbor, Carl Roberts said yes, the fireplace. He did not want to get smoked out and did not want his kids playing on their playground when the fireplace is lit. He said it is not near their playground. He said the neighbors on the other side are not affected. The only person in this whole scenario that is affected by the fireplace is them. It is not the Sannas, as it is away from their house. They are the only ones truly affected in a negative manner.

John McRae asked Mr. Roberts if he was aware of any other properties in their neighborhood that have this type of outdoor feature.

Neighbor, Carl Roberts said there may be and he was sure there were probably a lot of fireplaces there, but he was not the HOA. He said if they are there and they were approved, then that was the Board's decision too. He said the reason that there are variances was because they are on a case-by-case. The exceptions for the variances appear to be legitimate exceptions. The only people benefiting from this if it is allowed would be the Sannas and they are why he was here. He said he was not unreasonable and that he knew you have to learn how to compromise. He said that there has to be communication and generally the person who wants something done is the one that starts the communication and not the other way around. That did not happen in this case. He said that they were not here because he did something

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John McRae asked Mr. Roberts when he was aware that the fireplace existed.

Neighbor, Carl Roberts thought when he saw it that it had already been approved and they had no rights. He said about six months he realized from the HOA's new president that the Sannas were non-compliant.

Gary Willis told Mr. Roberts that one of the reasons he stated he did not like the fireplace was because the smoke blows into his yard and aggravates your son's asthma.

Neighbor, Carl Roberts stated his son did not have asthma, but severe allergies.

Gary Willis asked if the child was a boy or a girl that had the allergies, the ages of the child and if the allergies were seasonal.

Neighbor, Carl Roberts stated it was his son and they had all boys. He further stated the son who is 8 years old is the one with the allergies.

Gary Willis asked if allergies were daily or seasonal.

Neighbor, Carl Roberts said he believed more seasonal like when around grass.

Gary Willis stated then that the allergies were not just smoke-related allergies.

Neighbor, Carl Roberts said are they exasperated by the smoke? - Yes they are.

Gary Willis asked if the child had been tested by a physician.

Neighbor, Carl Roberts stated yes he had and gets on medicine during the seasons and does the smoke exasperate allergies? - Yes it does.

Chair Sandy Jones called for any additional public comment.

There was none.

Chair Sandy Jones called for the applicant to come back to the podium.

Applicant Chris Sanna directed the Board to the 6 Leylands in the photos that were presented to the Board.

Walt Rekuc asked Staff Angela Rambeau for clarification stating he was confused and needed help in understanding a matter. If the fireplace was 25 feet from the side property line, could it be placed there at 25 feet or would it have to be at a point that is 50 feet from the side property line?

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Staff Angela Rambeau stated she did not think that was the issue either way. The issue is not how far it is from the side property line. The issue is that it is not allowed in the side yard. There are two terms here. We have the "yard" and the "minimum yard." The side yard is defined as anything from the side plain of the house all the way to the property line. There has been a lot of discussion tonight about the 25 feet. That is the minimum side yard. The ordinance states that the fireplace can only go in a rear yard so we are talking everything basically in back of the house. It states it can only go in the rear yard, but not the minimum rear yard so again, it cannot go in that 50 feet as the attorney stated. The 50 feet is the minimum setback for the rear yard.

Walt Rekuc said so when we are considering this variance and we are looking at that code section and if we are trying to give them the relief they are asking for from that code, is the amount of relief they are asking 2 foot 5 inches, which is 25 feet from the line, or is it a greater distance than that?

Staff Angela Rambeau stated she believed it is approximately the 10 feet.

Walt Rekuc said then the actual side of the house is 10 feet from the edge of the rear of the fireplace to the side of the house.

Staff Angela Rambeau stated the fireplace is approximately 10 feet from the side plain of the house, yes.

Scott Kilgore asked the applicant knowing what you know today and you now know the ordinance, if the fireplace was not there - you had built the pool but now you want to build a fireplace - a hypothetical question - what would you do? Would you build the fireplace something or would you just live without a fireplace?

Applicant Chris Sanna stated like he had previously said, the fireplace was gift for his wife at the time, so I would basically still build the fireplace.

Scott Kilgore asked where you would put it.

Applicant Chris Sanna stated he would try to place it within the guidelines of where the Board is asking.

Scott Kilgore said so it would be possible then?

Applicant Chris Sanna said if he knew what he knows now, he would have to think twice about doing so and if probably would not look as good as it does today.

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Marcia Parsons asked Staff a question. The applicant's attorney stated in the letter that her client's playground had been there 10 years ago and also those 10 years ago under Fulton County, it had to be 10 ft. from the property line. Can you think back, or what does our ordinance say? Is it the same as Fulton County or what does it say? It seems to me that it is the playground location that is causing the problem and it may be easier to move that versus moving the fireplace in my opinion.

Staff Angela Rambeau said that the City of Milton did adopt Fulton County's ordinance when it comes to accessory structures. The playground would be considered an accessory structure. The ordinance states that accessory structures are allowed in the side and rear yards, but they are not allowed in the minimum side and rear yards which would be 25 and 50 feet respectively. I do not know the exact distance of that playground from the property line, but just looking at the pictures, it would be in the minimum rear yard. It has to be 25 ft. from the side property line.

Walt Rekuc asked for one more clarification. He said the applicant's attorney mentioned again that the fireplace had to be in the rear yard. To me it sounds like without worrying about where the fireplace is, it looks like for sure that fireplace is in the rear yard. It is between the rear property line and the rear of the house. I am looking at Section 3.3.2(5) on page 3-37 of the Code. I want to make sure I understand this because I think what I am hearing is they are in violation of being within the side yard, but I do not see them being in violation of not having the fireplace in the rear yard.

Staff Angela Rambeau said you can consider that location a rear yard but it is also I think the fact that it is a side yard kind of trumps that. It is in the back of the house. I know those definitions are a little confusing. Those definitions, front yard, rear yard, side yard, actually refer to the minimum rear yard or the setback as opposed to back yard. The rear yard is the minimum required distance, but that is the rear yard setback. It states the fireplace may only be placed in the rear yard

Walt Rekuc said so it meets the requirement that it is in the rear yard.

Staff Angela Rambeau said Staff is of the opinion that the problem is that it is in the side yard.

Walt Rekuc said so it is the encroachment into the side yard that is the problem and the encroachment is two-fold. One, that it is not within that perpendicular plain of being behind the house which is at that 10 ft. distance and the other one is that it is within the 2 ft. 5 in. dimension of the minimum side yard setback which is 25 ft. from the side property line. I am just trying to understand both things.

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Staff Angela Rambeau said you could say it is not allowed in the side yard or the minimum side yard.

Applicant Chris Sanna advised the Board he had signed statements from other neighbors who were not able to attend tonight's meeting. (Presented to Staff).

Chair Sandy Jones said at this time public comment is closed.

Attorney Valerie Wuff Sherman stated she wanted it to be on the record she was requesting that the Board consider the letter she submitted as well.

Chair Sandy Jones called for a motion.

Gary Willis stated he would like to make a motion.

Motion and Second: Gary Willis made a motion to approve V08-021 with the following conditions: (1) the applicant shall obtain a building permit for the fireplace and pay all applicable fees and penalties for starting construction without a permit; (2) the applicant shall install a gas starter to the fireplace to minimize smoke during the lighting of the fireplace; and (3) the applicant shall install gas logs in the fireplace to minimize smoke and that gas logs be the only material allowed within this fireplace.

Mr. Willis stated his basis for this is that this can be made in harmony with the ordinance because it does not matter if they move the fireplace 10 feet or 12 feet. The smoke will still go into Mr. Robert's backyard and this will solve the whole entire problem.

Todd Chernik seconded the motion.

Discussion:

Scott Kilgore stated he would like to speak in favor of that. He said in some ways it makes it more in harmony with the ordinance. The main point of the ordinance as reading it - as it is talking about kitchen, fireplaces - it is pretty clear that the ordinance was mainly concerned with the smoke and odor and this actually does a better job of achieving that intent if we only allow the gas logs. It is also a good compromise because it allows the applicant the enjoyment of a fireplace at the same time. I would like to state for the record that I think we as a Board should state that we are not approving this because it is already built. That was part of the reason I was asking the applicant what you would do if it was not there and he wanted to build it. If the applicant was coming to the Board today to request to build this fireplace in this location I think we could grant this variance for the same reason.

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We are not granting it at all because it already exists because that would be a financial hardship and that is not a basis upon which we could approve it.

Chair Sandy Jones asked if there was any additional discussion. There was none.

Vote: 6-0-1, with John McRae voting in opposition. The motion carried.

Chair Sandy Jones called the next agenda item, V08-022, 2985 Manor Bridge Drive, Milton, GA. The Chair asked Staff to present.

Staff Angela Rambeau stated that Staff was requesting a deferral on this variance, as applicant has some other issues to deal with way beyond the storage shed so we are working with the applicant on that.

Chair Sandy Jones asked if it was a deferral to their next meeting or an indefinite deferral at this point.

Staff Angela Rambeau stated it could only be deferred for 30 days at a time, so it would be to the next meeting.

Scott Kilgore said so it is a deferral, not a withdrawal, correct?

Staff Angela Rambeau stated at this time it is deferral.

Chair Sandy Jones asked if they had to do a motion.

Staff Angela Rambeau said they have to accept the deferral.

Motion and Second: Sandy Jones made a motion to accept Staff's request to defer V08-022. Seconded by Marcia Parsons. There was no discussion. Vote: 7-0. The motion unanimously carried.

Chair Sandy Jones called the next agenda item, Other Business.

Scott Kilgore stated he would like to submit a change in writing to the By-laws of the City of Milton Board of Zoning Appeals. He stated at this time he was only submitting it for the Board to consider and will be making a motion at a future meeting once he gets a read on how everyone reacts to this. This is what the Board has already been discussing regarding the removal of officers and this is his take on it. He said he took a stab at wording this and making the change and submitting it for the Board to consider.

Chair Sandy Jones stated that Board member Walt Rekuc has put forth a recommendation of some revisions to the Board's By-laws as well. She asked the Board to review both versions and come to the next meeting with any comments for

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discussion and both will have met the time requirement and then they could vote to move forward and enact the By-law changes.

Walt Rekuc said it looked like under Section 7 for Scott's changes, he said he (Mr. Rekuc) was recommending some changes that he thought they had voted on last time. He asked the Board if they had voted on those last time.

Todd Chernik stated they had not.

Walt Rekuc said so under item #4, Section 7, he was mentioning that the last sentence, *the applicant shall have no time limit* - under Scott's #4, you are saying shall have a time limit of 10 minutes.

Scott Kilgore said he was just not addressing that. He felt like he wanted to just one thing at a time so he was only submitting the new item. He said he did not have a feeling one way or the other on that one, but he just did not address that one. He said he thought that was part of yours (Mr. Rekuc's).

Walt Rekuc said he just wanted to clarify that because he was not sure he disagreed with what you (Mr. Kilgore) have written. He said he just wanted to make sure the Board considers Section 7 changes as well. Also under Section 7, item #6, that each person shall have a maximum of 3 minutes to speak instead of 2 minutes and then under Section 7, item #7, that the Chair call for the applicant to present a rebuttal or closing statement and will have a 5 minute time limit. He said presently they do not have a time limit set for closing statements. He said he wanted to mention those changes as well.

Scott Kilgore said he was submitting this and was not entertaining any changes to what he was submitting. He said he believed they really need to break this down into a very atomic process and if one member once to submit a change, then submit a change and then a motion can be made and the Board can vote on that change. He said if we put too many changes into each one then we get into too much detail. He stated it needs to be done in a process to make it easier.

Walt Rekuc stated he agreed with Mr. Kilgore to keep it simple, but at the same time if they are going to change the code and that means everyone gets a chance at a rewrite, he would rather do it all at one time so that all changes are there and the board can say we amended all the issues. He said we did discuss this at our opening session where the board agreed to these changes and for some reason they never got reflected in the changes to their By-laws so what he is trying to state is just he wants to clean up some procedural things and if the group changes their mind or disagrees with it, then that is great, but he was trying to procedurally clean up what was agreed to when they first got started.

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Chair Sandy Jones stated there was no new business so she would like to adjourn the meeting.

Scott Kilgore said if you (Mr. Rekuc) make a motion for the changes that you have submitted, because they include so many things, some of those I may disagree with so I would have to vote "no" on the whole package, so that is why I think each change should be submitted individually so I can vote "yes" on the ones I agree with and "no" on the ones I disagree with, unless you just want it to go as a package and take the rest on that.

Walt Rekuc said when they vote on it they will be voting on individual items. He said that is the way I would proceed with it.

John McRae said we do not have to vote on the document as a whole.

Chair Sandy Jones stated they will vote on it as discreet individual items. She said some of the issues regarding the time limits have actually already been discussed at one of their earlier meetings back in 2007, were voted on, but were never included.

Continued Board Discussion on procedure on considering revisions.

John McRae asked if at one point there was a section under Article 3 or 4 addressing the removal of board members proper or were you just concerned with the officer?

Scott Kilgore stated there is no section on removal, but is a section under member duties that requires members to attend two-thirds of the meetings and failure to do so warrants removal, but that is all he saw in the By-laws as far as removal of members. He said he originally worded his change as "removal of members" and that is not what they are dealing with - they are talking about "removal of officers."

Chair Sandy Jones said they are all appointed and to actually be removed they have to be removed by the Council member that appointed them. She asked the Board if they felt comfortable that during a discussion period during their next agenda that they would be able to discuss this issue in Other Business or does the Board feel that there needs to be another work session or special meeting called.

Todd Chernik asked what their next agenda looked like.

Staff Angela Rambeau said two cases - three with the deferral.

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Chair Sandy Jones requested that Walt Rekuc get his changes to Angela and asked Angela to send it out to the Board so everyone would have the same fresh and most current version.

Todd Chernik said he wanted to address one point that John McRae made and which he also thought was very important about removal of a member. He said the points that Scott is suggesting regarding removal of an officer would also apply to a member. However, the form in which you would bring that request would be before the Board of Ethics. He said the provision proposed in Section 1, Article 4 gives us the power as our own board in house to remove an officer without having to go through the Board of Ethics.

John McRae said and they are not proposing that they include any wording to reverse the Board of Ethics, which is just an understood practice.

Chair Sandy Jones said that question was actually asked in one of the board's discussions when the city attorney was here and that is what he said. She asked if there was any additional discussion. There was no further discussion.

ADJOURNMENT

Motion and Second: Chair Sandy Jones moved to adjourn the Board of Zoning Appeals meeting. Seconded by Marcia Parsons. There was no discussion. Vote: 7-0. Motion unanimously carried.

Meeting adjourned at 8:38 p.m.

Date Approved: _____

Approved By:

Francesca Ivie
City Clerk's Office

Sandy Jones, Chair
Board of Zoning Appeals

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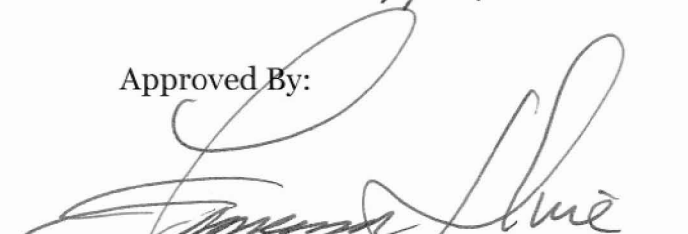
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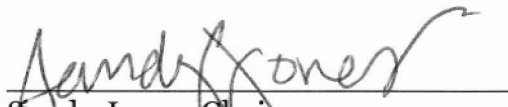
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Date Approved: 9/16/08

Approved By:



Francesca Ivie
City Clerk's Office



Sandy Jones, Chair
Board of Zoning Appeals