

MINUTES

City of Milton Board of Zoning Appeals Regular Meeting November 20, 7:00 PM

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

Not present: Sandy Jones

Meeting Leader/City Staff: Angela Rambeau, Community Development

AGENDA ITEMS

1. Call to order
2. Approval of October meeting minutes
3. V07-014, Deferred from October (heard after V07-016)
4. V07-016, Deferred from October (heard ahead of V07-014)
5. V07-017, Jim Bonem
6. V07-019, Douglas and Gloria Hilliard
7. Other business
8. Adjournment

PLEDGE OF ALLEGIANCE

MEETING CALLED TO ORDER

CHAIR HEIDI SOWDER:

Read purpose and charge of the Board of Zoning Appeals, and then called the first Agenda Item, Approval of the October 16, 2007 Meeting Minutes. Heidi asked if there were any questions or comments. Board decided to defer approval.

MOTION AND SECOND: Chair Heidi Sowder made a motion to defer the October meeting minutes. Scott Kilgore **seconded** the motion to defer the minutes. **VOTE** was called and was unanimous (6-0).

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CHAIR HEIDI SOWDER:

- Stated Sandy Jones was not present at the meeting.

CHAIR HEIDI SOWDER:

- Moved on to next order of business, which is the consideration of application for variances:

CHAIR HEIDI SOWDER:

- Advised public speakers on length of time to speak for presenting and rebuttal.

CHAIR HEIDI SOWDER:

- Requested Staff call the First Agenda Item, **V07-014**.

STAFF ANGELA RAMBEAU:

- Called **V07-014**.
- This case was deferred from the October meeting at the request of Public Works.
- This is for the subdivision of Freemanville Crossing. They were requesting a variance to allow a road with a 16% grade exceeding the grade allowed by the city by 4%.
- Public Works had requested that they complete some items on their punch list before the Board voted on their variance.
- Applicant stated he would not be at the meeting.

CHAIR HEIDI SOWDER:

- Asked if any progress had been made on this at all.

STAFF ANGELA RAMBEAU:

- Has done some things, but it is not complete.
- Staff did want to make the point that there are two separate issues.
- Applicant was looking forward to getting this resolved so he can kind of pace himself and get a better idea of how he can proceed with the subdivision.
- The punch list should not necessarily hold up the decision on the variance.

CHAIR HEIDI SOWDER:

- Asked if Board was still allowed to hear this case, discuss it and make a decision this evening when the applicant is not present or should it be deferred until the December meeting?

STAFF ANGELA RAMBEAU:

- I think he would prefer that you deferred it because his engineer could not be here tonight.

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CHAIR HEIDI SOWDER:

- If no further questions ready to make a motion.

WALT REKUC:

- As far as the grade, did anybody have a problem with that grade?

STAFF ANGELA RAMBEAU:

- No, Public Works was fine with it.
- Fire Safety took a truck out there and did not have problem with the access.

WALT REKUC:

- If approve the variance with the condition that the punch list be taken care of, possibly help to get the case down the road?

STAFF ANGELA RAMBEAU:

- He would probably like that.

CHAIR HEIDI SOWDER:

- Is that something we could do this evening?

STAFF ANGELA RAMBEAU:

- Sure.

SCOTT KILGORE:

- Just as a point of clarification, I want to make sure that we are talking about V07-016, is that correct? I thought you had said we were talking about V07-014.

STAFF ANGELA RAMBEAU:

- I may have written down the wrong one on the agenda.
- We are talking about V07-016.

CHAIR HEIDI SOWDER:

- Staff's concerns from Abbie Jones and the stormwater review is that the punch list items were the big problem not the road itself.

STAFF ANGELA RAMBEAU:

- Not give a final plat until he meets the other requirements of the punch list.

CHAIR HEIDI SOWDER:

- Any other questions for Staff?
- I would like to make a motion.

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MOTION AND SECOND: Heidi Sowder made a motion to approve Part 1 and Part 2 of the variance as requested by the applicant. Scott Kilgore **seconded** the motion to approve Parts 1 and 2.

CHAIR HEIDI SOWDER:

- Any other discussion?

SCOTT KILGORE:

- Would just like to state that the reason that we are approving this and for clarification.
- The grounds for approval is because the slope is in harmony with the intent of the ordinance for the slopes of the roads.
- Fire department has determined there is no issue there and we are in harmony with the ordinance, is that a true statement?
- And they have all looked at it?

STAFF ANGELA RAMBEAU:

- Yes and none of the other departments have a problem with it.
- Yes and they have sent a truck out there.

TODD CHERNIK:

- Is it necessary per Walt's suggestion to condition this on the completion of the punch list?

STAFF ANGELA RAMBEAU:

- The punch list will get done because it is the only way you can get a final plat.

CHAIR HEIDI SOWDER:

- Any other discussion?
- Took final vote for **VO7-016** to allow an increase of the maximum allowed road grade to 16.1 percent and in Part 2 to increase the length of the road where the grade exceeds 12% to 210 feet.

VOTE: 6-0. Motion carried unanimously.

CHAIR HEIDI SOWDER:

- Requested Angela call the next item, **VO7-014**.

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ANGELA RAMBEAU:

- Application is for a proposed drugstore, unofficially a Walgreens.
- Proposed corner of Birmingham Highway - Birmingham Crossroads.
- Applicant is asking for relief from the maximum setbacks on both corners due to topography and extensive easements on the site.
- Case was deferred from the October meeting.

CHAIR HEIDI SOWDER:

- Applicant is not here this evening.
- Was a deferral of this requested?

ANGELA RAMBEAU:

- Yes they have.

CHAIR HEIDI SOWDER:

- Any questions regarding this petition?
- Based upon Staff's recommendation for deferral, made a motion.

MOTION AND SECOND: Heidi Sowder made a motion to defer this case until the December meeting. Marcia Parsons **seconded** the motion to defer.

CHAIR HEIDI SOWDER:

- Any discussion?
- Took a vote to defer this case to the December, 2007 meeting.

VOTE: 6-0. Motion to defer passed unanimously.

CHAIR HEIDI SOWDER:

- Requested Angela call the next item, **V07-017**.

ANGELA RAMBEAU:

- This petition is for **V07-017**.
- Requested variance is to allow an existing house to encroach 4 feet, 5" into the north side yard setback (Article 6, Section 6.3.3C).
- House currently unoccupied and for sale by the owners.
- Applicant's letter of intent stated the home was incorrectly placed in the building envelope.
- If not for that mistake, it would have fit.
- He stated the variance is due to the size, shape and topography.
- Denial of the variance will create an unnecessary hardship for the owner.
- Will cause no detriment to the public.

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- Mr. Boman stated that the only alternative to the approval of this variance is tearing down the side portion of the house or the entire house and moving it to the right.
- Mr. Boman stated this would cause serious financial hardship in an already dismal real estate market.
- No further comments from any other department.
- Applicant has stated a justification for the variance.
- **Read Staff's recommendations.**

CHAIR HEIDI SOWDER:

- Questions of Staff regarding this petition?

WALT REKUC:

- When was house built?
- Asked if house was within City of Milton's jurisdiction or was it built during the time Fulton County was involved with permitting?

ANGELA RAMBEAU:

- House was permitted and built under Fulton County.

WALT REKUC:

- Was it CO'd under Fulton County as well?

ANGELA RAMBEAU:

- I believe so.

SCOTT KILGORE:

- Asked if the neighboring house that would be encroached upon was not occupied at this time and if also for sale?

ANGELA RAMBEAU:

- Not 100% sure, but I believe it is for sale also.

CHAIR HEIDI SOWDER:

- Called for applicant to come forward.

APPLICANT JIM BONEM, 3840 Lakeheath Drive, Cumming, GA:

- Site property located at 825 Tramore Place..
- Represent Bonem & Honeycutt Construction, LLC.
- Submitted variance after we had a final plat done on the house.
- Determined in final plat that left-hand side of the house was 4 feet over the line.
- We had already received a CO from Fulton County.

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- If title of the house to another person, the title company would have a problem with that 4 feet without a variance.
- Came to the City of Milton to apply for a variance.
- House on the left-hand side is occupied and is for sale as well.
- Not a detriment to him.
- He has not filed any complaint or stated it was a problem with this variance request.

GARY WILLIS:

- Do you have a letter from him stating that?

APPLICANT JIM BONEM:

- Do not have a letter.
- He was made aware of the hearing tonight.
- Would have shown up if he had a problem concerning this.
- Assumed there is no problem with that individual.
- There are letters that get sent out in this process that give him an opportunity to be here to object and he has not come forward.
- Assumed by his noncompliance that he is fine with it.

SCOTT KILGORE:

- Looked at house last night. Although dark, it looked like the houses in question were kind of turned in the cul-de-sac and not parallel to each other.
- Encroachment is just the corner of the house of the house on the right.
- Is house on the left right up against the building setback line or is it back some?

APPLICANT JIM BONEM:

- Do not know exactly where Milton setback is.
- Did not build that house, we built to the left of him.
- Had a problem with was if you take a look at the survey that was done, our house would have fit within the envelope.
- When it was dug and the crew went out and put the house in, he apparently pulled the measurement 4 feet to the left.
- If he had not, it would have fit within the building envelope.
- They do not sit exactly parallel to each other because of the cul-de-sac and then because of the retention pond in the back right-hand corner it became very tight and challenging to get the house sited on the lot to begin with.

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SCOTT KILGORE:

- Do you think the other house is probably as tight as yours?

APPLICANT JIM BONEM:

- He is probably tighter on the left-hand side.
- He slid as close as he could to the left-hand side.
- Believe he is probably 27-28 feet off of the line so we are probably still within that 50 foot envelope or close to it.
- The guy on the right is maybe 30 feet off the line and now we are 29 feet off of the line so there is a lot of room on that side.

CHAIR HEIDI SOWDER:

- I also drove by and looked at the homes.
- The way they are angled are a detriment per se.
- My only concern is the vegetation in between the two homes could maybe be bumped up a little bit or provide a little bit more buffering.

APPLICANT JIM BONEM:

- He owns more on the left-hand side than we do.
- That would be up to his discretion.
- He is in the process of building a new home with Milton on another piece of property.
- I do not think he is looking to spend any more money because he has already dropped his price.
- I cannot say we are willing to do that either.

WALT REKUC:

- How many years have you been a builder?

APPLICANT JIM BONEM:

- 24 years.

WALT REKUC:

- Are you certified by the state to be a builder?

APPLICANT JIM BONEM:

- Yes I am.

WALT REKUC:

- When you typically build a house and you put your home in, do you typically get a foundation survey done?

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APPLICANT JIM BONEM:

- I typically do, but in this case I did not.
- The reason we did is we were so busy doing so many other things.
- Did not pull the survey.
- When we did finally pull the survey to determine whether there was a problem we immediately came to you folks.
- Went to Scott Reece and Robyn and we started to go through the process.

WALT REKUC:

- Had another hearing where someone had built in the side yard setback.
- He was also a builder and I know I gave him the same speech I am going to give you.
- We expect you to be a professional builder which means that you need to follow the code and make sure that you keep your building within the line.
- At the same time, mistakes happen.
- Happened on my house and I admitted to the Board that I made a mistake on building my home .7 feet over the eastside setback line.
- Problems do happen and they do with surveys and foundation crews that turn things slightly.
- Want to make sure that we get your assurance that we will not see you back here again.
- Hopefully you will be building shortly and building many new homes and get them all sold.
- Want to make sure that you do your best to keep from seeing us too often.

APPLICANT JIM BONEM:

- I hope we do not have to see you again.

CHAIR HEIDI SOWDER:

- Any other questions for the applicant or staff?
- Any one here that has public comment this evening?
- Okay, then we will move ahead.
- I would like then to make a motion to close the public hearing.

MOTION AND SECOND: Heidi Sowder made a motion to close public hearing. Marcia Parsons **seconded** the motion to close public hearing. **VOTE: 6-0.** Motion passed unanimously and public hearing was closed.

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WALT REKUC:

- I would like to restate that the reason this Board is granting this variance is because we feel that the home is in harmony with the community.
- That granting this variance should not have any detriment.
- That it is also a financial hardship to physically move this portion of the house outside of the setback.
- That we believe this is a fair and just way to handle the situation.

CHAIR HEIDI SOWDER:

- I would like then to make a motion to approve the variance.

MOTION AND SECOND: Heidi Sowder made a motion to approve with the condition that shrubs/trees be added between the houses per recommendation of City Arborist. Marcia Parsons **seconded** the motion to approve the variance with conditions. **VOTE: 6-0.** Motion passed unanimously.

CHAIR HEIDI SOWDER:

- Staff please call the next agenda item.

ANGELA RAMBEAU:

- **V07-019**, 215 Blackrock Trace.
- Requesting variance to allow an addition to a house to encroach into the 50 foot stream buffer and the 75 foot impervious setback.
- Property is a 1.56 acre lot in the Reddstone Subdivision.
- Applicants seeking relief from Ordinance 06-12-72, Article 6, Section 5.i,ii.
- Want to build a sunroom addition onto their house which will encroach into the required 50 foot steam bank buffer and 75 foot impervious setback.
- Staff held a Focus Meeting on August 29, 2007 where comments were provided.

ANGELA RAMBEAU:

- Applicant would be required to provide these BMPs as part of the building permit.
- Read ***Standards for Consideration*** from Petition.
- If you choose to approve this variance, Staff has proposed the following conditions:
 - (1) Provide mitigation for stormwater quality, i.e., capture all run-off;
 - (2) Require all building permits; and
 - (3) Provide a site plan accurately showing existing and proposed structures and improvements with dimensions and elevations and correct location of buffers and setbacks.

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WALT REKUC:

- Question about what happens if house burns down and how would it be rebuilt?
- When was house built?

ANGELA RAMBEAU:

- If act of God, can rebuild to current standards.
- If caused by man, have to meet current ordinances.
- House purchased in October 2004 prior to Milton and prior to change in buffer ordinance.
- Was built before ordinance was in effect.

SCOTT KILGORE:

- Intent of stream buffer ordinance?
- Vegetation along bank helps minimize?

ANGELA RAMBEAU:

- Not expert.
- Believe intent was to minimize any disturbance to area around stream.
- Keep debris out of stream and sedimentation run-off to stream.
- Vegetation one natural way to minimize.

CHAIR HEIDI SOWDER:

- Also protect stream from floods.

ANGELA RAMBEAU:

- Protection would be for homeowner.

CHAIR HEIDI SOWDER:

- Called applicant forward.

GLORIA HILLIARD, 215 Blackrock Trace, Milton, GA:

- Hardship due to the layout of the house and stream on their lot.
- No other area for the proposed improvements.
- With new setbacks house would be all the way to road.

CHAIR HEIDI SOWDER:

- Did review site plan and make trip out to look at property.
- Wood deck currently on home.
- Consider that area for sundeck?
- Building will be whole new construction.
- Large disturbance of land.

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GLORIA HILLIARD:

- Patio of the home is a deck.

MARCIA PARSONS:

- Construction will be two story structure.
- New basement and a one story?

DOUGLAS HILLIARD:

- With topography will be a basement
- Main floor about 22 feet high with vaulted ceiling.
- No second story or stairs going to second story.
- Sunroom would be off of the deck.

WALT REKUC:

- Separate building from your house.
- Asked staff if allowed to build separate structure this close to another?
- Minimum setback requirements.

ANGELA RAMBEAU:

- Not sure what the building separation requirements are.

WALT REKUC:

- Build a wall that touched existing structure that tied to your roof.

DOUGLAS HILLIARD:

- We could do that.

WALT REKUC:

- Septic system and reserve system location for the house?

DOUGLAS HILLIARD:

- Drain field for septic runs down to stream all way up to backyard.
- Reserve line probably on left-side.

WALT REKUC:

- When was house purchased?

DOUGLAS HILLIARD:

- October 29, 2004.
- Purchased from Peachtree Residential.

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WALT REKUC:

- Any indication about a stream buffer on your plat or closing documents?

DOUGLAS HILLIARD:

- Yes.
- Builder represented should not be a problem with stream buffer.

WALT REKUC:

- Your hardship is once it was purchased the new laws changed after that.
- What is purpose of the new building?

GLORIA HILLIARD:

- Hard time in winter with my plants and my birds.
- Want a sunroom for this reason.
- Room location is for the sun and best access from the house.
- Do not want to have to go out to another area.

GARY WILLIS:

- Letters from homeowners association or adjoining neighbors?

DOUGLAS HILLIARD:

- Four letters.
- Nobody lives across the street from us.
- House is in back of cul-de-sac.

ANGELA RAMBEAU:

- Read to the Board who the letters were from, including one from homeowners association.

GARY WILLIS:

- Materials used to build structure?

DOUGLAS HILLIARD:

- Brick and stone.

TODD CHERNIK:

- Where are you in planning stage?
- Architect?

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DOUGLAS HILLIARD:

- Very simple design.
- 4 walls and vaulted ceiling.
- I have built other structures with my partner.

TODD CHERNIK:

- Do your covenants allow for a detached structure to be built?
- Provide a letter from the homeowner's architectural board.

GLORIA HILLIARD:

- Architectural board had no problems.
- Have a letter from them.

ANGELA RAMBEAU:

- City does not enforce the homeowner's covenants.

WALT REKUC:

- If approved Staff recommends one of the conditions be mitigation to help water quality regarding buffer.
- Would you be willing to do this to mitigation stormwater run-off?

DOUGLAS HILLIARD:

- Yes.

SCOTT KILGORE:

- Perhaps work with city arborist to recompense planting along bank.

DOUGLAS HILLIARD:

- Yes, that would be fine.
- Already have done some plantings.

CHAIR HEIDI SOWDER:

- Any other questions or comments?
- Motion to close public hearing at this time.

MOTION AND SECOND: Heidi Sowder made a motion to close public hearing. Marcia Parsons **seconded** the motion to close public hearing. **VOTE: 6-0.** Motion passed unanimously and public hearing was closed.

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CHAIR HEIDI SOWDER:

- Open floor to a motion on V07-019.
- Believe this matter does pose a hardship for these owners at this location.
- Property does have extraordinary and exceptional conditions.
- Warrants granting variance to the ordinance.

MOTION AND SECOND: Heidi Sowder made a motion to approve V07-019 based upon the recommendation conditions of Staff as follows: (1) to provide mitigation for stormwater quality to catch the run-off from any proposed impervious surfaces and put it into a recharge system; (2) obtain all the required building permits for a building retaining wall, etc.; (3) to provide a site plan accurately showing existing and proposed structures and improvements with the dimensions, elevations and stream location buffer setbacks; and (4) to provide additional plantings per the city arborist to buffer the area further from any stormwater run-off and shore off the buffer area. Marcia Parsons **seconded** the motion. **VOTE: 6-0.**

WALT REKUC:

- Question for clarification.
- If building has to be attached to other building, will be allow that to occur?
- Can we make a friendly amendment?

ANGELA RAMBEAU:

- Could state to meet all building codes.

CHAIR HEIDI SOWDER:

- Make your motion to make an amendment.
- We will vote on the amendment and then I will restate original motion.

MOTION AND SECOND: Walt Rekuc made a motion to amend the conditions to the original motion to add one additional condition to allow if the build permit process requires building to be attached to the existing building, that applicants would not have to come back to Board since it does not meet this plan provided it is no more than a 5 foot difference and attach it as need be. **Seconded** by Heidi Sowder for discussion.

ANGELA RAMBEAU:

- Are you stating you want to allow applicants to do a detached building even if the building codes require it to be attached?

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WALT REKUC:

- No.
- If code requires it be attached, want them to have ability to attach it even though it is not shown on their current plan.
- Prefer it be attached to the front versus the rear to lessen the impact.

CHAIR HEIDI SOWDER:

- **MOTION AND SECOND:** Motion that board is going to add a condition that if structure is required to be attached to the existing structure, it is acceptable to the Board without applicant returning for an additional variance. **Seconded** by Gary Willis. **VOTE: 4-2.** Scott Kilgore and Todd Chernik being in opposition. Motion carried.

CHAIR HEIDI SOWDER:

- Restated the original motion.

MOTION AND SECOND: Heidi Sowder made a motion to approve V07-019 based upon the recommendation conditions of Staff as follows: (1) to provide mitigation for stormwater quality to catch the run-off from any proposed impervious surfaces and put it into a recharge system; (2) obtain all the required building permits for a building retaining wall, etc.; (3) to provide a site plan accurately showing existing and proposed structures and improvements with the dimensions, elevations and stream location buffer setbacks; (4) to provide additional plantings per the city arborist to buffer the area further from any stormwater run-off and shore off the buffer area; and (5) if structure is required to be attached to the existing structure, it is acceptable to the Board without applicant returning for an additional variance. **Seconded** by Marcia Parsons. **VOTE: 4-2.** Motion carries. Scott Kilgore and Todd Chernik being in opposition.

NEW BUSINESS:

CHAIR HEIDI SOWDER:

- Any new business?

WALT REKUC:

- Statement to Staff that the Board's code books need to get updated.
- Need current code.
- Like to get packages early than a couple of days before hearing.
- Can be emailed if that helps.
- Helps expedite the meetings.

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CHAIR HEIDI SOWDER:

- Asked Staff when documents are due to them before upcoming meetings.
- Deadlines for submission?

ANGELA RAMBEAU:

- Application and site plan is due the first Tuesday of the month.
- Go to staff for comments.
- Pictures get taken.
- Staff reports gets written.

CHAIR HEIDI SOWDER:

- Would like to have packet 10 days prior to the meeting.
- Time to review and drive to the sites.
- Very helpful to Board.
- Will email you as a reminder to help you out.

MARCIA PARSONS:

- Thanked Angela and Staff for all their hard work.

CHAIR HEIDI SOWDER:

- No further business.
- Next scheduled meeting is Tuesday, December 18, 2007 at 7:00 p.m.

ADJOURNMENT

CHAIR HEIDI SOWDER:

MOTION AND SECOND Heidi Sowder made a motion to adjourn the meeting. Gary Willis **seconded** the motion to adjourn. **VOTE: 6-0.** Motion carried unanimously.

Meeting adjourned at 9:50 PM.

Date Approved: Dec 18, 2007



Francesca Ivie
City Clerk's Office



Heidi Sowder, Chair
Board of Zoning Appeals