

## MINUTES

### **City of Milton Board of Zoning Appeals Regular Meeting July 15, 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

#### **AGENDA:**

1. Call to order and pledge
2. Approval of June BZA meeting minutes
3. V08-018, 765 & 785 Broadwell Road, Sally Rich-Kolb
  1. To reduce the number of required parking spaces (Article 18.2.1) DEFERRED
4. **V08-019**, 1200 Birmingham Road, Todd Rainwater
  1. Boiling Springs Primitive Baptist Church
  2. To allow an addition to be located more than 30' from the edge of the required landscape strip (Article 12H.3.5.C.2)
  3. To allow an addition to have vinyl siding ( to match existing structure) (Article 12H.3.6.B.3)
  4. To allow an addition to have a ratio of openings (windows & doors) to solids (walls), less than 30% (Article 12H.3.6.D.1)
5. **V08-020**.125 Canongate Kirk Circle, John Empoliti
  1. To allow an accessory structure to encroach into the rear yard (Article 5.1.3.I)
6. Adjournment

#### **MEETING CALLED TO ORDER**

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

#### **PLEDGE OF ALLEGIANCE**

**Chair Sandy Jones:** Called the first agenda item, approval of the June 17, 2008 Board of Zoning Appeals meeting minutes.

**Motion and Second:** Walt Rekuc made a motion to defer voting on the May 20th meeting minutes until their next meeting in August due to some members still not having the opportunity to read the lengthy minutes. Marcia Parsons seconded the motion. There was no discussion. Vote: 7-0. Motion unanimously carried.

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

Read by the Chair Sandy Jones called the next agenda item, **V08-018**, 765 & 785 Broadwell Road, Sally Rich-Kolb, to reduce the number of required parking spaces (Article 18.2.1)

**Staff Angela Rambeau** requested this case again be deferred until the next meeting, as applicant still needed additional time before presenting to the Board.

**Chair Sandy Jones** stated V08-018 would be deferred until the August meeting.

**Chair Sandy Jones** called the next agenda item, **V08-019**, 120 Birmingham Road, Boiling Springs Primitive Baptist Church, Pat Gagen and Todd Rainwater

**Staff Angela Rambeau** read the Petition, to allow an addition to be located more than 30' from the edge of the required landscape strip (Article 12H.3.5.C.2), to allow an addition to have vinyl siding (to match existing structure) (Article 12H.3.6.B.3), and to allow an addition to have a ratio of openings (windows & doors) to solids (walls), less than 30% (Article 12H.3.6.D.1). Stated the Boiling Springs Primitive Baptist Church is zoned AG-1 and located on 8 acres in the Northwest Fulton Overlay District. She said in March 2008 the church undertook construction of a 2000 sq. ft. addition to their existing fellowship hall. Ms. Rambeau advised that a stop work order was issued by the City of Milton a few months later due to the working commencing without a permit. The church is applying for 3 zoning variances relating to the new addition. Ms. Rambeau stated that Staff held a one stop focus meeting with other staff members on June 25, 2008. The Building Plan Review has requested the church obtain the required building permits and noted that with the exception of the overlay requirements; current construction standards have been met. The Site Plan Review had no issues, the arborist has requested that the church add foundation plantings to the south and west elevations which the church has agreed to do, and DOT Stormwater had no issues. She stated the Board had been presented with the City of Milton's Design Review Board comments and recommendations that reviewed this matter on July 1, 2008. Ms. Rambeau stated the church had put a shed roof over the door that faces Birmingham Road and will add the black shutters with brackets to the new windows. Applicant states relief, if granted, would be in harmony with or could be made to be in harmony with the general purpose and intent of the zoning resolution and further states that Boiling Springs Primitive Church is a small church of limited means. Applicants further stated they had little guidance from Fulton County and at the time they started construction were not aware of the overlay requirements and in complying with the setback requirements and siding and openings would create an excessive economic hardship for the church.

**Staff's Recommendations:** Should the Board grant the relief requested, Staff recommends the following conditions: 1) The applicant shall obtain all required building permits; and 2) the applicant shall add foundation plantings to the south and west elevations. Staff would also like to add the recommendation from the BZA to add the brackets to the shed roof and the black shutters to the windows. These comments were made after the Staff Report went out.

**Applicant Pat Gagen, 5060 Burruss Mill Road, Cumming, GA:** Told the Board they had tried to make the changes suggested by the Design Review Board and that they are anxious to move forward. Mr. Gagen apologized for starting the project without a permit and said that the church is very old, was built by the members and the church has very limited funds. He directed the Board to look at the pictures he provided showing the addition and what he would look like

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from the road. He stated the fellowship building was 108 feet from the road and there were a lot of mature trees on the property. Mr. Gagen told the board the money for the new construction came from a collection from the church members and they have already gone beyond their budget.

**Applicant Todd Rainwater, 2207 Holly Court, Dunwoody, GA**

**Applicant Pat Gagen:** Told the Board that he had brought in some additional photographs for their review.

**[Applicant presented photos to the Board].**

**Applicant Pat Gagen:** Stated most everyone in the community loves the little church and the way it is. The church was going to take a petition around stating they liked the church the way it is. He said he did not know if that would be appropriate to present. **[Presented additional documentation to board].**

**Applicant Todd Rainwater:** Advised the Board the addition was a 12 by 48 addition and was just to add a dining space to the fellowship hall.

**Chair Sandy Jones:** Asked the Board if they had any questions for the applicants.

**Walt Rekuc:** Asked the applicant what type of materials were used on the building across the street from the church and if he was planning on doing any landscaping anywhere in front of the church or anywhere adjoining the church to either obscure it.

**Applicant Todd Rainwater:** Stated he believed it had brick and vinyl siding. Applicant directed the Board to the photos he provided.

**Walt Rekuc:** Asked about the house right next to the church.

**Applicant Todd Rainwater:** Said that would be the house with the black fence and he thought it might be hardy board or vinyl siding, but it is sided as well.

**Walt Rekuc:** Asked about the barn down below the church.

**Applicant Pat Gagen:** Stated he believed the barn was wooden and then going toward Birmingham there was an old farm house with a pasture and then the house.

**Walt Rekuc:** Asked applicant if they were okay with completing what the Design Review Board requested of them. Said it appeared they were still not compliant with the number of windows and the openings.

**Applicant Pat Gagen:** Stated he was not clear on the windows. Explained that the two small windows shown are in the old existing building and were the pastor's office. Applicant said due to the age of the building, they did not want to remove those windows and also that would incur a lot of money. Mr. Gagen stated the rest of the request including the landscaping they could do, but they do not have thousands of additional dollars to spend.

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**Walt Rekuc:** Stated one of their variances was requesting an addition to be located within more than 30 ft. from the edge of the landscape strip. He asked if the landscape strip was beside the side lot line.

**Staff Angela Rambeau:** Said it was in the front and typically there would be a 10 ft. landscape strip but because it had been there so long there was no official landscape strip.

**Walt Rekuc:** Asked Ms. Rambeau if she was saying that this is a distance from the front 10 ft. landscape strip and not the side.

**Staff Angela Rambeau:** Reiterated that it was the front.

**Walt Rekuc:** Told applicant since their building was 180 feet, they would have to read the Code, because it says it is supposed to be within 20 feet, but there is another section in the Code that says *for all properties and lots located adjacent to public right-of-way and 400 or more feet beyond an intersection, buildings shall be set back no more than 30 feet from the edge of the required landscape strip.* He stated he believed that is what they were referring to. He said it sounded like they were going away from the street.

**Applicant Pat Gagen:** Stated to the side. He said as you are facing the street, they refer to that as the back of the building, but facing from the road it would actually be the side of the building.

**Walt Rekuc:** Said so your point is that this church is an existing structure, that it has been at that location for many years and they are just continuing the existing structure and not trying to get it down towards the street where there are some topography issues, but just keep it where it is.

**Applicant Pat Gagen:** Need the addition because when they have their fellowship meetings everyone can barely fit in the church. He said the new dining area will be 50% bigger.

**Marcia Parsons:** Asked applicant where they are talking about the shed roof with the brackets over the door, what type of landing were they planning to put there. Asked if there would be a small sidewalk there or what is the church's plan.

**Applicant Pat Gagen:** Stated that that doorway was put there just for a fire exit because the main entrance is on the other side of the building. He said there is a sidewalk coming down the side of the church, so they are just planning to leave that landing as it is with dirt.

**Staff Angela Rambeau:** Stated there is no building code requirement that requires them to be in a stoop or sidewalk. They do have ADA access on the side. There is no requirement in the Overlay either.

**Walt Rekuc:** Asked applicant to show on the site plan exactly where the addition was going to be and where the old building is.

**[Applicant approached the dais, and indicated the locations on the site plan for the Board].**

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**Walt Rekuc:** Stated so when you looked to expand the building, it will be expanded to the side, is that correct?

**Applicant Pat Gagen:** Stated that was correct.

**Walt Rekuc: Started speaking to applicant and then paused.**

**Chair Sandy Jones:** Asked several of the board members to please not have a side bar discussion while a member was speaking.

**Walt Rekuc:** Then you would not be expanding it to the front or adding a new building, but basically expanding what was there and going straight back away from Birmingham Highway. So the first part of the variance you are trying to get is really doing nothing more than expanding the building in width and the length is what is, plus you are adding a little more to the length, is that correct?

**Applicant Pat Gagen:** Right.

**Applicant Todd Rainwater:** Stated the width was 12 ft. and the length is 48 ft.

**Walt Rekuc:** Stated that was a very important part in understanding the request for the variance. He said the second part is on the vinyl siding. He asked if there was any vinyl siding being left that was on the old portion of the building or was it all removed.

**Applicant Pat Gagen:** Said the back siding came all the way around on the old building. It was just the front side that was removed because of the roof expansion.

**Walt Rekuc:** Asked if the Design Review Board had a problem with the vinyl siding that was being proposed.

**Applicant Pat Gagen:** Stated he thought the only problem the DRB had was with the windows and adding the shutters.

**Walt Rekuc:** Stated he was reading the Design Review Board's recommendations that stated: *The Board does not support the use of vinyl siding as is prohibited by the Overlay.* He further stated that the Overlay goes on to talk about how they want buildings to conform with its adjoining neighbors and have diversity and everything. He said it was hard for him to understand how you could try to be like something, but then when you are expanding what you have, you cannot use the same material. He asked what the window opening ratios were currently.

**Applicant Todd Rainwater:** Stated he believed 23%.

**Walt Rekuc:** So it is a 7% reduction. He asked if adding a window would get you at that required percentage.

**Applicant Pat Gagen:** Stated that the two windows are basically covering the office.

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**Walt Rekuc:** Said he must have misunderstood the ordinance. He said he thought it applied to the whole building and not just for one side. He asked about adding a window or a false window that looks like a window.

**Staff Angela Rambeau:** Said it was for the entire building.

**Applicant Pat Gagen:** Said he was not of the calculations then, because the kitchen portion is windows all the way around.

**Chair Sandy Jones:** Asked if applicants were saying that the 23% was based on the new addition and not for the current building and including the new addition openings.

**Applicant Pat Gagen:** Stated that was correct.

**[Discussion about the calculations].**

**John McRae:** Stated that in the packet it states that the current design provides a 23% ratio of windows to solids and he thought that meant existing plus the addition.

**Todd Chernik:** Stated the requested variance is to allow an addition to have a ratio of openings of less than 30%. He said as he could see from the pictures, it appears there are only two windows in the addition. To add another window in the addition is really what would be required to be compliant with the ordinance.

**Chair Sandy Jones:** Asked if anyone else had questions for the applicants.

**John McRae:** Asked if they were able to find vinyl to match the old vinyl on the existing building.

**Applicant Pat Gagen:** Stated from what he understood, the existing church building was built in the 1920's and then the bathrooms were added on in the 1950's, then the fellowship hall, the original portion was built in the early 1950's and added on to in the 1960's and again in the 1970's. He stated the siding was added on in the 1980's. He said he thought the vinyl siding was added on in the late 1980's.

**Applicant Todd Rainwater:** Said he they were allowed to add the vinyl siding, it would all match.

**Applicant Pat Gagen:** Stated one of the church members donated the original vinyl siding and he is donating the vinyl siding for the addition as well. This is why they want to use it, as they are getting a good deal.

**John McRae:** Asked if the portion of construction that faces Birmingham Road, did they depend on natural light to filter through the windows shown on the photographs or could they screen that with trees or other plant life to make that portion less visible.

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**Applicant Pat Gagen:** Stated the pastor had curtains on those windows and he faces his office the other way. He stated the whole area is shaded already by the mature shade trees. He said they could put in small trees.

**Scott Kilgore:** Asked what the feasibility would be in adding a window anywhere on the building to achieve the 30%.

**Applicant Pat Gagen:** Stated the problem is when they built, they already put up that structure so they would have to tear a hole in the wall to put it in. Said he did not see any place a window could go in. The big area is where the bathrooms are and the heat and air-conditioning and storage.

**Walt Rekuc:** Stated he thought they did have a great place to put a window. Where the new roof is that they created, if they could put a window up towards the top of that roof which could be vented and fanned, but you say it is a window. Said that it would not have to be a window that opened, but even just a facade.

**[Board showed applicant at the dais where on the site plan the location that the window could go in].**

**Marcia Parsons:** Asked if they had priced the difference between the clapboard siding versus the vinyl siding budget.

**Applicant Todd Rainwater:** Reiterated that the vinyl was donated.

**Applicant Pat Gagen:** Stated one of the church's members was a builder and had a line of vinyl siding so they could put the same matching siding on the addition.

**Marcia Parsons:** Asked applicant if he had seen the siding and whether it was a perfect match.

**Applicant Pat Gagen:** Stated it looked the same to him.

**Chair Sandy Jones:** Asked if there was any public comment.

There was no public comment.

**Staff Angela Rambeau:** Told the Board she wanted to clarify a few things and directed them to the last two pages. She stated on page 11, that picture was from June 16th and then on the last page, that picture was from June 29th, so that shows the view from Birmingham and what it looked like on the 29th.

**Todd Rainwater:** Stated that one of the Design Review Board's recommendations was to put in a vented thing on the gable up there. They also suggested the roof over the door and shutters as well to break up that wall as shown.

**Chair Sandy Jones:** Asked if the Board had any additional questions for staff.

There were no additional questions.

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**Chair Sandy Jones:** Stated public comment was closed and called for a motion.

**Motion and Second:** Walt Rekuc made a motion to approve the 3 requested variances with the understanding that this property is a unique existing building that is trying to be kept in harmony with the existing structure and building that was presently there, and that they be allowed to keep the building as is and be granted all 3 variances, and that shutters be added per the Design Review Board's recommendation, that brackets be added to the shed roof, and the applicant shall add foundation plantings to the south and west elevations, and the applicant shall obtain all required building permits. Seconded by Sandy Jones.

**Chair Sandy Jones:** Called for discussion.

**Discussion:**

**Walt Rekuc:** Stated again they are looking at an existing building and not a new building or a new construction for a new church building separate and whole upon itself. He said had that been the case, he would have looked at it much more assertively in saying that it had to follow the exact policies prescribed, but due to its distance away from the street that you would not be able to tell that it is vinyl at 180 feet and did not believe you could tell that there is a 7% difference in the number of windows again at 180 feet distance away from the street. He said lastly, that they are just again adding on to the building so that this was his reasoning for the granting of the variances.

**Scott Kilgore:** Stated he wanted to speak in favor of Mr. Rekuc's motion. He said in the Overlay he thought the main purpose for the 30 feet in the Overlay is to enforce the interior parking in a commercial situation, which obviously is not applicable in this case. He said in this case the building is so far back from the street, that by virtue of its location, it would be in harmony with the intent of the ordinance. He stated as far as the materials, the purpose in the Overlay standards is to provide a consistent aesthetically pleasing presentation and this building is not commercial in nature and to require a different type of siding on the addition would be in disharmony because it would be an inconsistent look and the whole idea of the ordinance is to have a consistent look and feel. He questioned Mr. Rekuc about why he did not add a condition on adding a window. He said he knew the shutters would help, but he would like to try to get in harmony with that the intent of not having the large wall area. Asked what the other Board Members thought and then stated he would drop his line of questioning when he realized there was a vent area behind the trees which would achieve what they were looking for.

**Chair Sandy Jones:** Stated with a motion and second on the table, they would go ahead and take a vote. Vote: 7-0. The motion unanimously carried.

**Chair Sandy Jones** called the next agenda item, **V08-020**, 125 Canongate Kirk Circle, John Empoliti.

**Staff Angela Rambeau** read the Petition for V08-020, 125 Canongate Kirk Circle. She stated the request was to allow an accessory structure, a gardening shed to encroach into the rear yard required in (Article 5.1.3.I). Ms. Rambeau stated the site was a single family residence located on a little over an acre within the Potterstone Subdivision and located in the Northwest Fulton Overlay. She said the applicant's back yard consisted of two fenced areas, one a garden and the other a grassy area in back of the house. The minimum rear yard for AG-1 property is 50 feet,

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and Mr. Empoliti would like to place a 12 x 16 foot garden shed in the setback approximately 15 feet from the rear property line. She stated Mr. Empoliti believes the proposed location would pose the minimum impact on the surrounding neighbors and plans to have additional trees and shrubbery around the structure to further screen it. She said on June 25th there was a focus meeting and the Building Plan Review's comment was that the applicant obtain the required building permit. Site Plan Review had no issues, the arborist noted that no specimen trees appear to be affected by the request and DOT Stormwater had no issues. The applicant has stated that his lot is of such size and shape that he essentially has no rear or side yard and most of the yard is contained within the minimum rear setback. The zoning ordinance prohibits accessory structures in the minimum side or rear yard.

**Staffs Recommended Conditions:** Should the Board chose to approve the application: 1) that the applicant obtain all required building permits; and 2) the applicant shall add additional landscaping, including Evergreens per approval of the city arborist in order to screen the shed from the rear neighbors.

**Staff Angela Rambeau:** Advised the Board there were some letters and emails in their packet from some of the adjacent homeowners. She stated she also had some additional handouts that were not in their packet from some of the neighbors as well.

**Chair Sandy Jones:** Asked if there were any questions for Staff.

**Applicant John Empoliti, 125 Canongate Kirk Circle, Milton, GA:** presented his case and stated he was applying for a variance to the rear yard setback. He said he did not realize you needed a building permit to put a shed in your back yard or on your property. He said the location he proposed was the only location he could put one that would be level and not be visible from the street which is an HOA requirement. He stated he received a formal response from the HOA's Architectural Review Committee which approved the location of the shed after considering other locations. He stated there was only 50 ft., 6 inches to the edge of his home, so he essentially has no use of his entire back yard for anything according to the ordinance. Mr. Empoliti stated the construction of the shed would match the construction of his home with hardy plank siding, wood-framed shingle roof that would match the shingles of his home. He said he had no problem with adding additional shrubbery to screen his neighbor, but there was quite a bit of foliage there already that screens his left neighbor and large trees in the back and some shrubbery that screen the two rear neighbors.

**Chair Sandy Jones:** Asked if the Board had any questions for the Applicant.

**John McRae:** Asked applicant if the shed was still in the same state as shown in their packet.

**Applicant John Empoliti:** Stated the day he received concern from his neighbor he finished putting up the last two walls that he had framed and then he wrapped it in plastic the next day and contacted the city the next morning.

**John McRae:** Asked applicant if he was doing the construction on his own and when did he begin building the shed.

**Applicant John Empoliti:** Stated he was doing it alone and he began that week or shortly before that.

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**John McRae:** Asked if he had applied for any permits.

**Applicant John Empoliti:** Stated he did not realize you needed a permit to put a shed up as it is not attached to the house. He thought since it was a structure primarily for storage, it would not require a permit.

**John McRae:** Asked applicant when he contacted his homeowner's association.

**Applicant John Empoliti:** Stated he submitted his original application in March, but there was no Architectural Review Committee at that time so he received by email approval from his homeowner's board. He said he submitted another formal request to the Architectural Review Committee after it was formed and got approval earlier in the week.

**John McRae:** Stated it appeared the shed was sitting on wood blocks.

**Applicant John Empoliti:** Said it was sitting on footings because there was some water runoff from the neighbor's property that runs down into his backyard. The footings go into the ground.

**Scott Kilgore:** It appeared from the drawings there was an alternate location on the side yard and asked applicant to explain that.

**Applicant John Empoliti:** Explained that the side of his house - there is a basement that has an exit there on the side that has a poured patio with French doors. There are two windows on the door that are ground level and then it begins a gradual slope. He said there is a grouping of trees to the right. He stated that was in plain view of his rear neighbor.

**[Applicant went to projections screen and showed the Board the location of the side yard area].**

**Chair Sandy Jones:** Asked about the homeowner's association rule that any structure cannot be visible from the front.

**Applicant John Empoliti:** Stated cannot be visible from the street, correct.

**Chair Sandy Jones:** For clarification asked what the distance was from the back edge of applicant's home to his property line.

**Applicant John Empoliti:** Stated fifty feet.

**Scott Kilgore:** Asked if the HOA requirement of not being visible from the street, allowed for foliage screening to meet that requirement.

**Applicant John Empoliti:** Stated since the screening was not discussed, he would have to defer to the Architectural Review Committee for that.

**Applicant John Empoliti:** Thought he would have to screen the entire area because it would be visible from his rear neighbor. That was one of the issues from his rear neighbor was that they could see it from its location.

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**Walt Rekuc:** Asked applicant why he chose the location he did for the shed rather than up against the house. Stated if he had placed it up closer to the house he may have not needed less of a variance and also could have been away from the ditch where the water runs off.

**Applicant John Empoliti:** Stated the reason was there are no solid wall area, and that there were windows all along the back. Said it was 15 ft. from the fence and the water runs maybe half way through that. He stated he tried to aesthetically center it and considered the line of sight from the neighbors' houses.

**Walt Rekuc:** Asked applicant if the shed was something he was concerned about that he had to keep it away from his house.

**Applicant John Empoliti:** Reiterated the reason was primarily due to all the windows along that side of the house. He said there are window all along the entire area.

**Walt Rekuc:** Asked what the reason was for building the shed.

**Applicant John Empoliti:** Stated for his lawn mowers and gardening tools. He wanted to use it to grow his seedlings and for storage.

**Walt Rekuc:** Asked how he was thinking of screening the area from his neighbors and what he would plant.

**Applicant John Empoliti:** Stated some type of Evergreen or something that would grow quickly. He said the trees that are already there are 20 plus feet and already up on a hill, so would not be able to plant anything that would get that tall that would not take quite some time.

**[Additional discussion about plantings in the area and types of plants applicant might consider].**

**Chair Sandy Jones:** Asked if there were any additional questions.

**Chair Sandy Jones:** Call for public comment.

**William Vason, 421 Calten Hill Court, Milton, GA [Spoke in Opposition].** Mr. Vason stated he was the neighbor directly behind the shed in question and was in opposition for two reasons. He stated that nine years ago when they purchased their home they did consider the fact that their back yard and the neighbor's back yard were not very deep. They did not want a structure of this type to be built between the homes so they referenced the zoning ordinance that applied which was the Fulton County Zoning Ordinance that was adopted by the City of Milton, in addition to the neighborhood guidelines as well which called for the 50 ft. setback. He stated that as a result of the setback they knew they would not have a structure built between the both properties. The second reason for the objection was there is always a possibility if not this particular neighbor, but another neighbor that might not have the same green thumb could potentially decide to change a gardening shed into a poker shed.

**[Passed out to the Board an article about a man who built a structure with about the same dimensions and used it for a poker shed].**

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Mr. Vason continued stating that their master bedroom is up on a hill and if there were to be any congregation, conversation, or card game in this area, it would literally keep them up all night. He told the Board that there was no guarantee that this scenario could not potentially happen and that would adversely affect their quality of life. He stated the zoning ordinances are written specifically for this type of potential situation and to prevent this sort of thing from happening. He said he believes the zoning requirements in this case regarding the placement of the shed should comply with the zoning requirements of the city and for the neighborhood.

**Walt Rekuc:** Asked the Mr. Vason to show from the projection screen where their home was located.

**[Applicant went to the projection screen and pointed out the location of his property].**

**William Vason** stated from his perspective, the applicant should have checked the zoning ordinance before going forward with his project.

**Mark Homrich, 220 Shandwick Place, Milton, GA [Support].** Mr. Homrich stated he was on the Potterstone Architectural Review Committee. He requested the variance be requested for applicant so the shed did not have to be placed on the side of their property. The homeowners would not want to set precedence for future homeowners. There is usually some opposition from neighbors whenever a situation arises. He stated their neighborhood has been good about working out the landscaping for buffering. He said it was the opinion of the ARC that this would be the best location for the Empoliti property for the placement of the shed.

**Scott Kilgore:** Stated he looked over their HOA rules and regulations and saw something about the Milton Ordinance always being observed. He asked how this got approved in light of the fact it was in complete violation of the building ordinance that Milton has in place for the protection of the neighbors and why would the side be excluded, as that would make it in accordance with the Milton Ordinance.

**Mark Homrich:** Stated that would be a question for the Board and that he was not on the Board, but just the Architectural Review Committee. He said the applicant submitted his application to the Board and at that time there was no ARC. The Board was serving both functions then. When it was approved and the neighbor raised by the neighbor, the Board put an ARC in place and that was when he got involved.

**Chair Sandy Jones:** Asked if there was some sort of landscaping requirement as put of their conditions on the ARC and whether any attention was given to that regarding this application.

**Mark Homrich:** Stated the two approval conditions for the Potterstone ARC. One is a zoning variance from the City of Milton and the second is the landscaping is done to provide a buffer. He said the landscaping is a requirement.

**Scott Kilgore:** Asked if there was any requirement for soundproofing of the proposed structure.

**Mark Homrich:** Stated there was nothing in his application that indicated he was running any utilities to his structure, so for the purposes the applicant described for storage and gardening, there was no concern about gatherings or parties to support a noise concern.

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**John McRae:** Asked when the ARC considered this matter, was there room for neighbor comments.

**Mark Homrich:** Stated a letter went out to the four bordering neighbors asking them for comments and he received comments back from two of those neighbors.

**Walt Rekuc:** Asked if the ARC specified the type of landscaping or screening or made any recommendations regarding types of plantings.

**Mark Homrich:** Said they did not get into specifics, but he said he could share what they feel might be appropriate like the Leyland Cypress, which grows the fastest and can be close enough to provide a pretty solid screen and be attractive to the yard.

**Chair Sandy Jones:** Asked if there was any other public comment.

**William Vason:** Stated the letter Mr. Homrich was referring to that they responded to happened after the cease and desist order was placed for the structure. He said they were not asked in advance about whether or not they objected to the structure.

**Scott Kilgore:** Asked when the homeowners' association approved this project, was there a public notification to all neighbors.

**William Vason:** Asked if there was any public meeting that they could have attended.

**Scott Kilgore:** Said so this was pretty much a closed meeting.

**Beth Vason:** Stated that Staff Angela Rambeau should have a letter that they sent to the homeowners' board and the ARC that should be in their packet showing that they wanted some type of explanation because they would have immediately voiced their concern and said it was too close to the setbacks. The applicant then would have had every opportunity to not start construction had there been any communication at all. They would have been more than happy to discuss the setback requirements with Mr. Empoliti. She said the only sheds they are aware of in the neighbor are two that sit on the lake and they do not have neighbors that look into their shed, so as far as harmony, there is no harmony regarding gardening sheds in their neighborhood.

**Applicant John Empoliti:** Advised the Board he did have a copy of the Architectural Review Committee's response for them to review.

**[Applicant provided copies to the Board showing the line of sight].**

**John McRae:** Asked about the types of trees that were shown in the drawing and if those trees would lose their leaves in the winter.

**Mark Homrich:** There are several different types including pine trees. That is why they determined some additional landscaping would need to be planted.

**John McRae:** Asked Mr. Homrich about the other similar structures in their neighborhood.

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**Mark Homrich:** Stated he knows of two and they may be others, but if there have not been any concerns raised, then we would not hear about them.

**Scott Kilgore:** Asked Mr. Homrich if he was speaking this evening on behalf of the Board and if there had been a vote taken.

**Mark Homrich:** Stated he was speaking on behalf of the ARC, and that there had been a vote taken and it was unanimous. There are three ARC members. He stated the sequence of events was in the beginning of the year, Mr. Empoliti submitted his application, it went to the Board, the Board approved it, the construction began, a neighbor raised an objection and in that process it was highlighted that there was not an ARC that provided the approval. He said right around that same time period the stop work order was issued and everything came to a halt. Then the ARC was implemented, a new application was submitted to the ARC and that was solicited for feedback from the neighbors and that was reviewed, discussed, and then a formal response went back to Mr. Empoliti. The ARC at the request of the President of the HOA a request went out to residents for three of them to serve on the ARC and three people accepted. He said he was one of those three individuals. He said when the whole process started he was not involved with the Board or the ARC.

**Scott Kilgore:** Asked who the neighbor was that the applicant stated assisted in the construction of the shed.

**Mark Homrich:** Stated that he was the person assisting in the construction.

**Scott Kilgore:** Asked Mr. Homrich if he recused himself from voting on this project.

**Mark Homrich:** Stated he did not recuse himself and that he had absolutely no vested interest in the project. He said if the Board did not approve the zoning variance or if Mr. Empoliti were to accept an alternate location and if that were to be refused, he had no vested interest in the outcome either way. He said he was not getting paid or there was no bartering for other services.

**Chair Sandy Jones:** Asked if there were any other questions.

**Walt Rekuc:** Wanted to ask addition questions, but was advised by the Chair that the discussion was for the applicant and rebuttal.

**Chair Sandy Jones:** Asked if there were additional questions for Staff. There were none. Public hearing was then closed.

**Chair Sandy Jones:** Called for a motion.

**Motion and Second:** John McRae moved to deny the variance request based on the condition that it cannot be made in harmony with the spirit of the existing ordinance. Seconded by Scott Kilgore.

**Chair Sandy Jones:** Called for discussion.

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**DISCUSSION:**

**Todd Chernik:** Stated the reason for the application was due to the size, shape and topography of the property and further stated the hardship he stated would cause no detriment or harm to the public. He said based on what he heard from his rear neighbor tonight, that is not the case and there would be detriment caused to the public if this variance were approved. He stated furthermore, the purpose of the 50 foot setback required in the ordinance was for situations just as this.

**Scott Kilgore:** Stated it had not been shown that this would be the only location the shed could be built. He said it could be built on the side yard and be completely within the Milton Ordinance which is their main focus, so he did not believe there were extraordinary and exceptional conditions that force it be where it is so did not see the hardship and was not in harmony with the intent of the ordinance. He stated he believed they would be remiss in their duties if they did not uphold the ordinance in this case.

**Chair Sandy Jones:** Called for any additional discussion. There was no further discussion. Vote: 7-0. The motion unanimously carried for denial of **V08-020**.

**Chair Sandy Jones:** Called the next agenda item, Other Business.

[Lengthy Board Discussion about modifications to the Board of Zoning Appeals By-laws to make some administrative changes, some of which had never been implemented].

**SEE ATTACHMENT 1**

**PROPOSED CHANGES TO THE MILTON BOARD  
OF ZONING APPEALS BYLAWS**

*CD'S OF THE PORTION OF THE LAST AGENDA ITEM, OTHER BUSINESS, CONTAINING BOARD DISCUSSION REGARDING SUGGESTED CHANGES TO THE CITY OF MILTON BOARD OF ZONING APPEALS BYLAWS TO BE PROVIDED TO BOARD MEMBERS UPON REQUEST.*

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**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 9:20 pm

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

Approved By:

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

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

**City of Milton Board Zoning Appeals  
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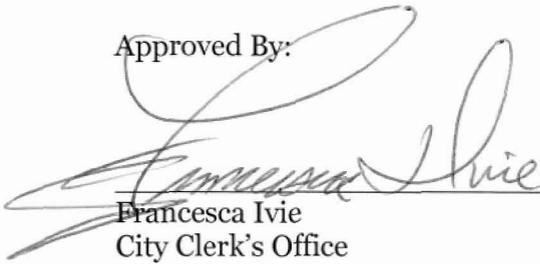
**ADJOURNMENT**

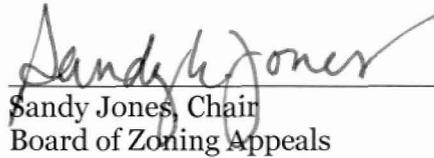
**Motion and Second:** Chair Sandy Jones moved to adjourn the Board of Zoning Appeals meeting. Seconded by Marcia Parsons. There was no discussion. Vote: 7-0. Motion unanimously carried.

Meeting adjourned at 9:20 pm

Date Approved: 8/19/08

Approved By:

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

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

## **ATTACHMENT 1**

# **PROPOSED CHANGES TO THE MILTON BOARD OF ZONING APPEALS BYLAWS**



### **By-Laws of the City of Milton Board of Zoning Appeals**

#### **Article I Establishment**

##### **Section 1:**

The Board of Zoning Appeals is created per Chapter 2, Administration Article 3, City Advisory Boards, Commissions and Authorities, of the City of Milton Code of Ordinances, and its membership has been appointed by the Mayor and City Council based on the composition and term requirements as required therein.

##### **Section 2:**

As allowed by Chapter 2, Administration, Article 3, City Advisory Boards, Commissions and Authorities, of the City of Milton Code of Ordinances the Board hereby adopts the rules, procedures, and guidelines for the transaction of its business as referenced herein.

#### **Article II Purpose**

##### **Section 1:**

The Board of Zoning Appeals is a quasi-legal board charged with hearing the following applications:

- A. Applications for primary variance requests;

- B. Appeals from the interpretation of any of the provisions of the City of Milton Zoning Ordinance by the Community Development Department Director in accordance with Section 22.2.3.;
- C. Appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by any City of Milton official in the enforcement of the Zoning Ordinance and;
- D. To hear and decide appeals from a permitting or procedural decision of the Director or Deputy Director of the Department of Community Development regarding minor or administrative variance requests for variances from regulations of the Zoning Ordinance and appeals of administrative determinations.

**Section 2:**

The Board of Zoning Appeals shall grant primary variances only when shown that the variance satisfies the following considerations:

- A. Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or,
- B. The application of the particular provision of the Zoning Ordinance 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; or,
- C. Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements can not be read from an adjoining public road.

**Article III  
Election of Officers**

**Section 1:**

Per Chapter 2, Administration, Article 3, City Advisory Boards, Commissions and Authorities, of the City of Milton Code of Ordinances this Board shall elect, yearly, a Chair from among its members.

**Section 2:**

The Board deems that a Chair shall be elected, by a majority of the Board's membership, and shall serve a term of one (1) year. The Chair shall preside over the Board and have the right to vote.

**Section 3:**

In addition, the Board deems it necessary to elect a Vice Chair, by a majority of the Board's membership, who shall serve a term of one (1) year. In the absence or disability of the Chair, the Vice Chair shall perform the duties of the Chair.

**Section 4:**

If the majority of the board is dissatisfied with the any of the officers' conduct, expansion of authority or ethical positions, or repeated absences ( 2 or more) from called meetings, the Board can ask for a vote of "no confidence" and remove that officer before their term expires, if a majority vote in the affirmative for this motion. The Board will then hold a new election for that position.

**Section 5:** The position of Chair and Vice Chair shall not run for re-election for their similar positions in the following year's election for these positions.

**Article IV  
Member Duties**

**Section 1:**

Per Chapter 2, Administration, Article 3, City Advisory Boards, Commissions and Authorities, of the City of Milton Code of Ordinances, Board members must attend two-thirds (2/3) of the meetings in a calendar year. Failure to do so warrants removal from the Board.

**Article V  
Meetings**

**Section 1:**

Regular meetings of the Board shall be held on the third (3<sup>rd</sup>) Tuesday of each month at 7:00 p.m. at the City of Milton City Hall, located at 13000 Deerfield Parkway, Building 100, Council Chambers, Milton, Georgia 30004.

**Section 2:**

Special Meetings of the Board may be called by the Chair, provided public notices are posted as required by law and all members are notified.

**Section 3:**

A quorum shall be present for a meeting of the Board to begin. A majority of the members of the Board (four (4) members) shall constitute a quorum.

**Section 4:**

All meetings shall be open to the public. The staff is directed to draft an agenda for meetings based on the order of business as follows. The agenda shall be followed unless the Chair makes a motion to hear items on the agenda out of their assigned order.

1. Pledge of allegiance.
2. Consideration of minutes of previous meeting.
3. Consideration of Primary Variances.
4. Consideration of Appeals

**Section 5:**

The Chair shall call the meeting to order and read the following statement prior to consideration of the agenda:

*The Board of Zoning Appeals is a quasi-legal board composed of resident volunteers of the City of Milton. The Board is charged with hearing requests for variances from the standards of the Zoning Ordinance and appeals of administrative determinations. With regard to decisions on Primary Variances, the Board's basis for decision is provided by three (3) considerations: 1) Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; or, 2) The application of the particular provision of the Zoning Ordinance 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; or, 3) Conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements can not be read from an adjoining public road.*

**Section 6:**

All applications to the Board shall be accompanied by the applicant or agent representing the applicant. Should the applicant or agent for a particular application not be present at the time the subject application is heard, the application shall be moved to the end of the agenda. Should the applicant or agent not be available at the time of reconsideration at the meeting, the Board shall vote to defer the application to the next available Board meeting within which time the applicant shall have met all applicable deadlines for the resubmitted material.

**Section 7:**

Consideration of applications by the Board shall be as follows:

1. The Chair identifies the application.
2. The staff presents the application to the Board.
3. The Board addresses questions to the staff regarding the application.
4. The Chair calls for the applicant to present the application. The applicant will have ~~no a time limit of 10 minutes.~~
5. The Board addresses questions to the applicant regarding the application.
6. The Chair opens the application for public comment. Each person will have a maximum of ~~2~~ 3 minutes to speak. There is no limit on the number of people that may speak.

7. The Chair calls for the applicant to present a rebuttal or closing statements and will have a 5 minute time limit.
8. The Board addresses questions to the applicant and staff regarding the application.
9. The Chair states that the public hearing is closed.
10. The Chair opens the application for a motion.
11. The Chair calls for a second to the motion.
12. The Chair calls for discussion on the motion.
13. The Chair calls for a vote on the motion.

**Section 8:**

Decisions of the Board shall be by a majority vote of the members present. On primary variances the Board may move to approve or partially approve; approve and impose conditions related to the application being considered; deny; hold for further study not less than 30 days; or withdraw. On secondary variances/interpretations the Board may move to affirm an order, requirement, or decision, wholly or partly; Reverse an order, requirement, or decision, wholly or partly; or clarify by presenting an interpretation of the text in the form of a statement of clarification. A vote on a motion resulting in a tie of the members present shall constitute a failed motion. The Board must take an action on an application if it is on a scheduled agenda.

**Article VI**  
**Modification of Bylaws**

**Section 1:**

Except for those requirements regulated by the City of Milton Code of Ordinances, any of these Procedures may be modified by a majority vote of the Board of Zoning Appeals at any regular meeting, provided the amendment was submitted in writing at a previous meeting and that said notification contains a full statement of the proposed amendment. Any proposed amendment:

1. Must include existing and proposed texts.
2. Must include a statement of the purpose and intended effect of the proposed change.
3. Must be held for 14 days before it is presented to the Board of Zoning Appeals for action.