

**MINUTES**

**City of Milton Board of Zoning Appeals  
Regular Meeting  
January 20, 2009 7:00 PM**

**BOARD MEMBERS PRESENT**

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

**CITY STAFF**

Angela Rambeau, Community Development

**AGENDA**

1. Call to order and pledge
2. Introduction of Board members
3. Approval of December meeting minutes
4. V08-022  
2985 Manor Bridge Drive, Elliott Smith for Anthony Pergola (The Manor)
5. V08-039  
16880 Quayside Drive, Richard Wernick (Kingsley Estates)  
ADMINISTRATIVELY MOVED TO FEBRUARY AGENDA
6. Other business
7. Adjournment

**CALL TO ORDER** Chair Sandy Jones called meeting to order.

**PLEDGE OF ALLEGIANCE**

**BOARD INTRODUCTIONS**

**APPROVAL OF MINUTES**

Sandy Jones made a motion to approve the December 16, 2008 meeting minutes with the inclusion of the changes of Todd Chernik and Walt Rekuc. The motion was seconded by Todd Chernik. There was no discussion. Vote: 6-0-1, with Scott Kilgore abstaining stating he had not reviewed the minutes. The motion carried.

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

Read by the Chair Sandy Jones.

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**Chair Sandy Jones**

- Requested Staff read the first agenda item, **V08-022**.

**Staff Angela Rambeau**

- Presented Variance **V08-022**, 2985 Manor Bridge Drive, Elliott Smith for Anthony Pergola
- To allow a 16 ft. by 14 ft. accessory structure (a storage shed) to encroach into the rear yard setback (Article 5.1.3.I)
- Shed is 3.7 ft. from the rear property line
- Location would be behind the sewer pump station
- Focus meeting was held on August 7, 2008.
- Read statements from the meeting to the Board members
- Read standards for consideration
- Staff's Recommended Conditions: (1) Applicant shall obtain a building permit and pay all applicable penalty fees for building a structure without a permit.

**Chair Sandy Jones**

- Called for questions from Board members to Staff
- Requested applicant come forward to present case.

**Elliott B. Smith, 4460 Wykeshire Court, Cumming, GA 30004**

- Attorney representing applicant, Anthony Pergola
- Presented history of property to the Board
- Mr. Pergola construction home on Lot #9 of The Manor Subdivision
- Purchased part of common area in August of 2007 from the developer
- At that time was not a conforming lot of record
- Property was quitclaimed to Mr. Pergola
- There were some promises by developer to do things to make lot conforming
- One of those things was to revise the final plat for the subdivision which was not done
- Submitted copy of letter from the developer of The Manor to Staff to present to the Board
- When shed was built Mr. Pergola did not realize there was building setback for that portion of the common area
- City cited Mr. Pergola and was advised would have to apply for a variance
- Met with city planners
- Were told need a Lot #9 plat revision to be in conformity
- Submitted a final plat to Staff to present to Board
- Submitted a letter from EMC Engineering to Staff to present to Board regarding the emergency spillway
- Property has certain easements on it related to the pump station and the spillway
- Shed location is outside of those easements and outside of the flood plain
- Do not believe any harm would be caused to public to allow shed to remain in its current location

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**Walt Rekuc**

- Discussion with applicant regarding plat
- Asked how close shed was to the property line
- Any discussion with adjoining neighbors
- Landscaping to minimize impact?

**Elliott B. Smith**

- Referenced EMC Engineering letter
- 3.7 ft. from the rear property line
- Have not heard from any of the neighbors
- There are significant plantings around line of the shed

**John McRae**

- Question about how close rear neighbors are to the shed
- Have those neighbors been contacted about the shed?

**Elliott B. Smith**

- Stated he did not have exact distance
- Appears to be a good distance from adjoining neighbors

**Applicant Anthony Pergola, 2485 Manor Bridge Drive, Milton, GA**

- Have a letter from the neighbor residing at 2975 Manor Bridge Drive stating he had no objection to the shed and could provide that letter
- Neighbor was very happy with the improvements that had been made to the property
- Stated the only person that could have a visual to back of the shed would be the neighbor behind him residing on Hamby Road
- Distance from shed to their property would be approximately 100 yards
- There are a lot of trees between the two
- All permits were applied for and received by the builder

**Todd Chernik**

- Questioned applicants about color of shed from photos the Board were provided
- Asked if there were plans to make the shed all one color and blend in

**Applicant Anthony Pergola**

- Plans are to use cedar shakes make it all natural in color

**Marcia Parsons**

- Question about location of shed on property

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**Applicant Anthony Pergola**

- Only flat area on the property
- Developer stated had to maintain the property
- Needed equipment to maintain the property
- Need a structure to keep equipment in
- Decided to build a nice structure instead of putting a prefab shed on the property that would not blend in
- Did not know was doing anything wrong

**Elliott B. Smith**

- Discussed with Board the 10 ft. sewer easement that would not allow a structure to be built in that location

**Chair Sandy Jones**

- Asked applicant the purpose for the shed
- Storage, woodworking shop?

**Applicant Anthony Pergola**

- Shed strictly for storage of equipment
- Currently has a lawnmower in it
- Has no lights or electric

**Chair Sandy Jones**

- Called for public comment

**Roland Ebright, 15745 Hamby Road, Milton, GA**

- Neighbor directly behind Mr. Pergola's house
- Spoke in opposition
- Knew about setbacks because he was planning to build another house himself on his property
- Concern was primarily due to it being so close to his property line
- He called code enforcement to inquire about setback rules as pertains to The Manor
- There is no landscaping behind the building at all
- Shed is very visible
- Cannot see the lake and the park, but can now only see the building
- Have no objection to having the building but believes should comply with the guidelines
- Disagreed with the flat area to construct the shed
- Batting cage was put in on a flat area
- Stated his house is about 80 feet from the property line, not 100 yards

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**Walt Rekuc**

- Asked Mr. Ebright if building was left at current location, but plantings were done on his side to screen it, would he be amenable to that

**Roland Ebright**

- Stated he would be in agreement with the screening
- Shed is already there now so too late to do anything about it
- Need some fast growing plantings

**Marcia Parsons**

- Discussion with Mr. Ebright about the planting of trees and the obstruction of view of lake

**Roland Ebright**

- Deed has already been done
- Do not believe Board is going to make applicant tear shed down
- Will just have to live with it
- Do not want any more buildings going up

**John McRae**

- Asked Mr. Ebright if he had knowledge of other neighbors that may similarly be affected
- If matter was deferred could this be resolved between the two of you?

**Roland Ebright**

- Stated no
- He owns 14 acres and there is nobody on either side of it
- Concern about other people wanting to build and getting close to his property line
- Stated he believed it could be resolved and that he was easy to get along with
- Could work well with the city's arborist

**Chair Sandy Jones**

- Called for additional questions
- Advised Mr. Ebright that precedence was not a basis for any forward work he may be planning on performing in the future

**Applicant Anthony Pergola**

- His entire property is bordered with very expensive large trees
- Planned on running those trees all away across but ran out of money
- This is still in the plans to do
- Do like the privacy so will do what Board requires
- Had to put the fence up that was required by The Manor
- Would work with Arborist and landscapers to decide if room and where to plant

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**Chair Sandy Jones**

- Called for additional questions
- There were none
- Closed public hearing
- Stated floor was open for a motion

**Motion and Second:** Walt Rekuc made a motion to approve V08-022 for the shed to remain due to the applicant being unaware of and not being shown on the plan were the building setback was and therefore made an error in placement of that building. Also applicant was unaware of the rear building setback as shown on the other lots and to also keep in harmony with the neighborhood to allow the shed to stay in its place and to have the following conditions: (1) The applicant shall obtain a building permit and pay all applicable fees for the building that was built without a permit; and (2) To work with the City Arborist to plant 5, 6 feet tall trees with staggered spacing behind the shed on Mr. Ebright's property, and those plantings should be of the type that will have their leaves year round. The motion was seconded by Sandy Jones.

Discussion:

**Chair Sandy Jones**

- Do not believe it is in their scope to determine the exact number of plantings.
- Can state Board would like something to be evergreen to provide screening for the back property owner
- Should leave planting decisions up to the expertise of the City Arborist
- Have confidence in arborist's decision

**Walt Rekuc**

- Did not want to leave it so much up to the Arborist that he is given a blank check as far as cost for the screening
- Preferred to give some defined limit of plants
- Not stating how or where to plant
- Would like to state there will be at least 5, 6 feet tall trees
- Have done a good deal of screening in his career
- Believes in his opinion this will provide sufficient screening
- Trying to find the quickest, easiest and most cost efficient way to screen

**Marcia Parsons**

- Would like to suggest a friendly amendment to the motion
- Stating a minimum of 5, subject to the approval of the city arborist

**Additional Board Discussion about number of trees for screening**

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**Scott Kilgore**

- Moved to amend that the language in the motion specifying number of plantings be struck from the motion and that the decision be left to the city arborist. There was no second. The motion failed.

There was no further discussion on the original motion to approve. Vote: 4-3, with Walt Rekuc, Gary Willis, Todd Chernik and Scott Kilgore voting for the motion to approve and Sandy Jones, John McRae and Marcia Parsons voting in opposition to the motion. The motion carried.

**Chair Sandy Jones**

- Requested Staff read the next agenda item, **V08-031**, 16355 Birmingham Highway, Milton, GA

**Staff Angela Rambeau**

- Staff requested that **V08-031** be deferred for thirty (30) days on behalf of the applicant
- Applicant is in process of getting both of the property owners to sign off on his proposal that he presented them on December 24th
- Applicant has one signature and needs one more

**Motion and Second:** Walt Rekuc moved to defer V08-031 for thirty (30) days. the motion was seconded by Gary Willis.

**Todd Chernik**

- Staff should send a message back to the applicant that Board expects a resolution by the next meeting or the case would need to be heard and resolved so it does not carry on
- Stated in his opinion he did not believe it is a good use of the city's time

**Gary Willis**

- Stated he did not believe the Board had the right to tell a citizen when they can come back before the Board
- It is the applicant that is asking for the variance, not us

**Chair Sandy Jones**

- Called for a vote on the motion

There was no other discussion. Vote: 7-0. The motion unanimously carried to defer V08-031 for thirty (30) days.

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**Chair Sandy Jones**

- Requested Staff read the next agenda item, **V08-039**, V08-039, 16880 Quayside Drive, Richard Wernick (Kingsley Estates)

**Staff Angela Rambeau**

- Stated that Staff had moved this item to the February agenda
- Did not see the required materials in time to be placed on this agenda

**Motion and Second:** Walt Rekuc made a motion to defer V08-039 to the Board's next meeting in February, 2009. The motion was seconded by Sandy Jones.

Discussion:

**Todd Chernik**

- Requested that Staff provide the Board with a picture or plan they can review prior to the next meeting

**Staff Angela Rambeau**

- Stated they would be provided with pictures and dimensions and any other relevant information

There was no further discussion. Vote: 7-0. The motion unanimously carried to defer V08-039.

**Chair Sandy Jones**

- Called for any new or old business

**Staff Angela Rambeau**

- Advised Board that it was the first of the year and time to elect new officers
- Asked if there were any nominations for 2009 Vice Chair

**John McRae**

- Can current Chair and Vice Chair serve another term?

**Staff Angela Rambeau**

- Stated they could be reelected
- No time limit

**John McRae**

- Nominated Todd Chernik for resumption of his vice chairmanship
- Nomination was seconded by Scott Kilgore

Discussion



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**Walt Rekuc**

- Inquired as to why they were calling for nominations for Vice Chair before the Chair
- Thought procedures should be discussed prior to taking action

**Gary Willis**

- Asked Mr. Kilgore to rescind his motion so they could start over

**Scott Kilgore**

- Rescinded his motion

**Gary Willis**

- Nominated Sandy Jones for Chair
- Scott Kilgore seconded the nomination

There was no discussion. Vote: 7-0. The vote was unanimous.

**Staff Angela Rambeau**

- Stated by unanimous vote, Sandy Jones was reelected for 2009 as the Chair of the Board of Zoning Appeals.

**Chair Sandy Jones**

- Called for nominations for the Vice Chair

**John McRae**

- Nominated Todd Chernik for the Vice Chair
- Nomination for Todd Chernik as Vice Chair was seconded by Marcia Parsons

Discussion:

**Walt Rekuc**

- Nominated himself for Vice Chair
- Marcia Parsons seconded the nomination for Walt Rekuc as Vice Chair

Discussion:

**Walt Rekuc**

- Stated his reasons for his nomination of himself as Vice Chair

There was no further discussion

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Vote for Todd Chernik as Vice Chair: 6-1, with Walt Rekuc voting in opposition.

Todd Chernik was elected as the Vice Chair of the Board of Zoning Appeals for 2009

**Chair Sandy Jones**

- Stated the only other business was that tomorrow evening the Board's proposed recommendations to their variance considerations would be presented to City Council
- Planning Commission had been copied as they review the proposed changes due to the fact these were changes to the Zoning Ordinance
- There were no comments back from the Planning Commission she was aware of as of today
- Both versions will be presented to City Council.
- The first was the December meeting version with comments from the Planning Commission
- One change was that harmony was put back in and the 10% for the maximum number of lots was removed
- The other is the document is the one that the BZA developed that Staff would be recommending
- Council does have the right to modify any changes and come back with questions
- Chair stated she would be at the Council meeting to address any questions

**Todd Chernik**

- Asked if they had endorsement from Staff as well as from the City Attorney on the Board's proposed document

**Chair Sandy Jones**

- Stated that was correct

**Todd Chernik**

- Asked if it would be appropriate to individually reach out to their Council representative

**Chair Sandy Jones**

- Stated that would be appropriate and that she had done so herself
- She gave her Council representative an update and explained there were two documents that will come before them to avoid confusion

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**Chair Sandy Jones**

- Asked Staff if their changes that were made to the By-laws to enforce time requirements, could they get those updated By-law changes?

**Staff Angela Rambeau**

- Stated she would provide them with the changed By-laws

**Chair Sandy Jones**

- Asked Staff if Council approves the Board's recommended changes for the primary variance considerations, how would that get incorporated into their By-laws?
- Would the Board have to formally vote the new By-law changes to be added?

**Staff Angela Rambeau**

- February variances heard would still be under old By-laws
- March would be under new document
- Would have to have a motion and vote to change the By-laws

**Chair Sandy Jones**

- Called for any other business
- There was none

**ADJOURNMENT**

**Motion and Second:** Sandy Jones made a motion to adjourn the Board of Zoning Appeals meeting. The motion was seconded by Marcia Parsons. There was no discussion. Vote: 7-0. Motion unanimously carried.

Meeting adjourned at 8:00 p.m.

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

Approved By:

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Francesca Ivie  
City Clerk's Office

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Sandy Jones, Chair  
Board of Zoning Appeals

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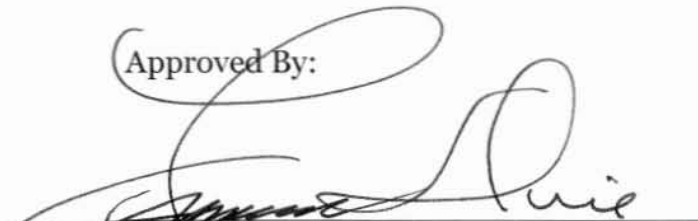
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Date Approved: 2/17/09

Approved By:

  
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Francesca Ivie  
City Clerk's Office

  
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Sandy Jones, Chair  
Board of Zoning Appeals