

ATHENS-CLARKE COUNTY HEARINGS BOARD
MINUTES
March 13, 2013

The Athens-Clarke County Hearings Board met and considered the following items at a public meeting at 3:00 p.m. on Wednesday, March 13, 2013, at 120 W. Dougherty Street, Athens, Georgia:

MEMBERS PRESENT: Ricky Boggs, David Ellison, Sean Hogan, Beverly King, Adrian Pritchett (Chair), and Ed Simpson
MEMBERS ABSENT: Genie Bernstein
STAFF PRESENT: Rick Cowick, Jane Erwin (ACCUG Planning); Brad McCook (ACCUG Transportation & Public Works); and Jim Davis (ACCUG Attorney)

CALL TO ORDER AND APPROVAL OF MINUTES:

1. **Introduction of Staff reports and all other documents submitted to the Hearings Board at the meeting into the official record.** Mr. Boggs made a motion to introduce all reports and documents into the official record. Mr. Simpson seconded the motion, which passed unanimously.
2. **Approve Minutes from the February 27, 2013 Hearings Board meeting.** Ms. King made a motion to approve. Mr. Simpson seconded the motion, which passed unanimously.

NEW BUSINESS:

1. **86 NORTH AVENUE VAR-2013-02-328**
Petitioner: Bill Nash for Whistlebury Condominiums
Zoning: C-D (Commercial-Downtown) River District
Tax ID: 163D3 G001
Request: A. Variance to allow 9,260 square feet of riparian buffer encroachment

Ms. Erwin gave the staff report with the recommendation of denial.

Mr. Ellison asked what other sort of environmental areas are there in Athens-Clarke County. Ms. Erwin replied that there are riparian buffers as in this case, floodplain, and wetlands.

Mr. Ellison asked if there are many environmental areas next to an urban area. Ms. Erwin replied that there are quite a few streams in the downtown area and the riparian buffers cover quite a bit of land.

Mr. Ellison asked if most environmental areas are not next to an urban property. Ms. Erwin replied that she could not say that.

Mr. Ellison asked if the environmental areas map was available. Ms. Erwin replied that she did not have the map with her, but it is available in the Planning Department.

Mr. Hogan explained that when the 75-foot riparian buffers were adopted, Commissioner David Lynn said that relief for owners of already developed properties and properties zoned for intensive development would be to apply to the Hearings Board for a variance with a mitigation plan. Countless properties are already developed within the 75-foot buffer in zoning districts where the density is very high. Where are we going to have the density, here or in the AR zone?

In Favor: Mr. Nash, petitioner, said that there is an existing parking lot in the 75-foot riparian buffer, which became effective after the parking was constructed. The goal is to have the new structure in line with the existing impervious structures. The curb line will be the edge of the proposed building. The current stormwater management situation was described. All the existing parking lot runoff is going directly into a catch basin and there is no disconnect point preventing it from going directly into the

creek. There are no existing trees in the parking lot. It is 100% impervious. No additional impervious surface is being proposed. Flumed stormwater would be filtered through a vegetative swale or biofilter. It provides for 50% stormwater treatment, according to the Georgia stormwater manual. Also, existing parking would be converted into pervious pavers or porous concrete for natural groundwater infiltration. That would not adversely affect the site. An EPD variance will be needed for the 25-foot State Waters buffer encroachment. Since 2004 the creek has moved slightly into the property. The owners do not want to apply for the State variance until they obtain a variance for the local 75-foot buffer. Additional stormwater information would be made available if needed.

In Opposition: None

Board Discussion: Mr. Hogan asked if the applicant designed the development in 2003. Mr. Nash replied that he did not.

Mr. Hogan asked if the applicant or staff were aware of any water quality requirements when the development was built. Neither the applicant nor staff was aware of the requirements at that time.

Mr. Hogan asked if a water quality treatment basin would be required now for what was built in 2003. Ms. Erwin replied that it would be required. Mr. Nash said that there could also be proprietary measures.

Mr. Hogan asked if there is enough room to bring the amount of stormwater treatment closer to 80%. He asked if the swale is an attempt to propose something that would be more palatable financially or is it the limit of what is possible to improve the water quality from the parking lot. Mr. Nash said that he was unfamiliar with what the goal of mitigation is; is it to bring water quality treatment up to 80%? He said that pervious pavers and the swale would be used, but there is a problem with getting any bigger area as there is a sanitary sewer through there. There are site constraints to just digging a hole and storing all the water. He asked if 80% was required. Mr. McCook said that it is.

Mr. Hogan said that what is proposed will obviously improve water quality over what is existing and going into the creek. He asked if this is the minimum variance necessary. Whatever you do will have to be approved by others anyway. All we are looking at is the encroachment into the buffer. The standards for an environmental variance set a high bar. If there is another technique that could be used to reach the 80% and there is room for it, then there is a question of why it was not included in the application. Mr. Nash replied that if there was not a buffer, then the development would not be required to meet 80% because it is under the threshold of 10,000 square feet. You actually get a credit for being adjacent to a stream buffer, to reduce area in stream buffers. This site may comply as it stands.

Mr. Hogan asked if the development was approved with a planned development rezoning. Ms. Erwin replied that it received a Special Use Permit based on the proposed property use, not anything related to the environmental area.

Mr. Hogan asked what the zoning is. Ms. Erwin replied that is Commercial-Downtown.

Mr. Hogan asked if the applicant would be able to get relief from EPD. Mr. Nash said that they are meeting their requirements.

Ms. King asked which tenants would use the spaces in the parking deck. Mr. Nash said that one level would be used by existing units and one level would be for the new units.

Mr. Hogan asked if the lot grade would allow the proposed building height without a lot of digging in the buffer. Mr. Nash said the grading will be deeper as you get further away from the buffer. It will be a pre-case structure, which will have minimal impact.

Mr. Hogan said that silt fencing would be required. Mr. Nash said that there will be an erosion, sediment, and pollution control plan.

Mr. Hogan asked about pervious credits due to the percentage of water flowing through. Mr. McCook said credit is given for using it. Mr. Hogan said that it could be 10% or 50%, but it is all the same; it is just credit for using it. Mr. Nash said that differing amounts of credit are given at the State level.

Mr. Hogan asked if the subject property was one parcel. Mr. Nash said that it is.

Mr. Simpson asked what Mr. Nash was referring to earlier about costs of potential pervious treatments. Mr. Nash replied that he is not aware of whether pervious pavers or porous concrete would be cheaper in this situation.

Mr. Hogan asked about the comments in the staff report by the Transportation & Public Works Department. The site will never be what it would be naturally, but it would recover to the point where it is giving the maximum benefit for water quality through that area. Ms. Erwin agreed.

Mr. Hogan said that what is proposed will be better than what is there now. Ms. Erwin said that staff just does not know how much.

Mr. Hogan asked if the applicant would need to provide that information when application is made for the plans review. Ms. Erwin replied that they would.

Mr. Hogan said that whether or not the Hearings Board grants relief from the buffer, the applicant still has to meet all the requirements when they turn in their plans. Ms. Erwin replied that the staff comments are just observations that we do not know at this point in time if the requirements will be met.

Mr. Ellison asked if public stormwater systems service the property. Mr. Nash and Ms. Erwin said that there are catch basins.

Mr. Ellison asked if it is known how much removal of suspended solids is provided by the public systems. Mr. McCook said that he did not know.

Mr. Ellison said that the application report denotes 50% stormwater treatment. He asked if the public system can provide 30%. Mr. McCook said that the applicant will have to provide 80%.

Mr. Hogan described various stormwater requirements among differing jurisdictions. Water quality is improving even with intensive development like this. He said that variance standard (a)(3), given what the applicant will have to do and the tools available to them, will be met. For standard (c)(1), to build that building, it appears to be the minimum needed to get into the 75-foot buffer. For standard (c)(2) we can be confident that EPD will be involved, an extra set of eyes to ensure that the water quality will be improved. Standard (a)(2)(c) is met. The Commercial-Downtown zone is for intensive, high-density development. We would be seeing improvement in water quality with this development. For standard (a)(2)(a), the property is unique due to the existing development permitted prior to the buffer increasing to 75 feet. They would have had reasonable expectations to be able to further develop their property when they purchased it and developed it. The definition of "extreme hardship" in this forum is really up to us whether it meets that and it does.

Mr. Pritchett said that "extreme hardship" could be defined legally, so it could be a court, not us to define that. There are two ways of looking at standard (b). You could look at the site now and say that there is plenty of economic use on the site right now with the existing buildings, so a variance would not be necessary to allow beneficial economic use of this land. On the other hand, it was built before the 75-foot buffer, so none of the buildings could be rebuilt without a variance should one of them burn down and need a building permit, so there is an inappropriate constraint on this property.

Mr. Ellison said that the "extreme hardship" in standard (b) does exist in that the buffer makes this portion of the property undevelopable. They are saying that they can remove 50% of the suspended solids. Athens-Clarke County can take care of the rest. They are paying for it so that is part of the service they get here. This meets the standards. If the property just sat as it is forever, then it would be more harm to the environment.

Mr. Hogan asked if the variance would go with the whole piece of property. Ms. Erwin said that it would without a condition. Mr. Hogan then stated, we could make a condition that it would only be in effect for this building and associated improvements. He suggested either conditioning approval on the time it would take to make the improvements or to the specific portion of the property. Ms. Erwin advised that it would be better to condition approval on area rather than time.

Mr. Pritchett said that the point is that they could put the 9,260 square feet anywhere they wanted to, but that he did not have a concern with that.

Motion: Mr. Hogan made a motion for approval. Mr. Ellison seconded the motion, which passed unanimously.

OTHER BUSINESS:

1. *Directors Report:* Mr. Cowick and Ms. Erwin announced that three applications have been received for the April agenda.
2. The next regularly scheduled meeting will be April 10, 2013.

The meeting was adjourned at 4:00 p.m.



Adrian Pritchett, Chair



Brad Griffin, Director/Secretary