

ATHENS-CLARKE COUNTY HEARINGS BOARD
MINUTES
January 13, 2014

The Athens-Clarke County Hearings Board met and considered the following items at a public meeting at 3:00 p.m. on Monday, January 13, 2014, at 120 W. Dougherty Street, Athens, Georgia:

- MEMBERS PRESENT:** Ricky Boggs, David Ellison (Chair), Beverly King, Adrian Pritchett, Pat Shearer, Ed Simpson (Vice-Chair) and Laura Wiese
- MEMBERS ABSENT:** None
- STAFF PRESENT:** Rick Cowick, Jane Erwin and Amber Eskew (ACCUG Planning); 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. Simpson made a motion to introduce all reports and documents into the official record. Mr. Ellison seconded and motion which passed unanimously.
2. **Adoption of Minutes from the November 13, 2013 Hearings Board meeting.** Ms. King made a motion to approve. Mr. Ellison seconded and the motion passed unanimously.

NEW BUSINESS:

1. **363 WESTCHESTER DRIVE** **VAR-2013-12-2511**
Petitioner: Tracy Smith for Will C. Dean, Jr.
Zoning: RM-2 (PD) (Mixed Density Residential Planned Development)
Tax ID: 064D4 A001O
Request: A. Variance to reduce side yard setback from 3' to 2'-8" for accessory structure

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

In Favor: Tracy Smith, agent for the owner, Will Dean, spoke indicating the storage unit is intended to accommodate a variety of things that are currently cluttering Mr. Dean's home, as well as items he has had to store in various other locations. She further noted that there was an error in locating the construction that was not intentional. Ms. Smith stated that the unit is well constructed; she also noted that the neighbor at 361 Westchester Drive has stated that he has no problem with the location of the storage unit. Ms. Smith also brought up the fact that the fence adjacent to the structure was constructed by Mr. Dean previously.

Will Dean spoke indicating that, if he has to, he will be willing to move the structure over to meet the Code.

In Opposition: None

Board Discussion: Mr. Ellison asked Ms. Smith to address the extraordinary and exceptional conditions standard; he noted that a statement on the application noted that there are no exceptional conditions. Ms. Smith noted that the structure is not seen from the street and there are trees screening it from the rear of the property; otherwise, it is like other properties in the area.

Mr. Ellison asked the Board for discussion on standard #1 or any others. Mr. Pritchett stated that he had difficulty with standard #1 as the petitioner has admitted there are not exceptional conditions. He noted that the Board is not authorized to approve a variance where the standards are not met.

Mr. Shearer asked Ms. Erwin a question about the measurement of the setback on the south side. Ms. Erwin responded that when she inspected the construction, she measured from the face of the fence and found a 1-foot discrepancy. Later when the owner and agent secured a copy of the plat for the property, it was revealed that the encroachment is actually only 4 inches due to the placement of the fence. Mr. Shearer also asked Mr. Dean about the expense of moving the structure over to make it comply versus the cost of removing the window and fire rating the wall and roof on the encroaching side. Ronnie Patrick, the builder and Mr. Dean's neighbor, asked for clarification on the fire rating of the structure. Ms. Erwin indicated that they would need to consult with the Building Inspections Department for information on what would be necessary to accomplish the fire rating. Mr. Shearer clarified that he wanted Mr. Dean to be aware of the expense. Mr. Patrick noted that, if he has to, he will move the structure.

Mr. Simpson asked how the mistake occurred, if it was due to the lack of a plat. Mr. Dean then explained the process they followed in siting the building and noted that the Building Inspections Department approved the construction of the building, but Planning found the setback problem. Mr. Patrick added clarification, explaining how the lot narrows from the front to the back.

Mr. Boggs inquired as to how the width of the building was determined. Mr. Dean explained it was based on measurements using an aerial photograph that Planning had when he went to apply for the permit. Mr. Patrick added that he left additional space on one side of the building so that it would be possible to walk beside the building and get a lawn mower past it in order to utilize a planned rear door on the structure, which has not been added.

Ms. Wiese asked about the differences in the inspections of the structures. Ms. Erwin indicated that Building Inspections inspects the footings and checks their location if they have something to work from. In this case, they did not have plans to work from. Mr. Davis, staff attorney, explained that locating the building is ultimately up to the owner/contractor to insure the proper placement of the structure.

Mr. Simpson asked about the impact of the structure placement on the neighbors. Ms. Erwin explained the requirements of building separations, etc.

Ms. King asked about who was responsible for providing the plat. Ms. Erwin explained that the property owner provided it. She further noted that Planning often approves permits for accessory structures without plats, but advises applicants that signing the application indicates agreement that the construction will meet the specified setbacks.

Mr. Patrick explained that the owner of the adjacent property indicated no problem with the structure and that the adjacent property is wider than Mr. Dean's property.

The Board held a discussion of the overall problem of trying to approve a variance without all of the standards being met.

Motion: Mr. Pritchett made a motion for denial of the variance. Mr. Ellison seconded.

Mr. Ellison invited Ms. Smith to speak again. She explained her difficulty in understanding standard number #1 and in answering the question positively when Planning staff could also not indicate what is extraordinary or exceptional about the lot. Mr. Ellison responded that staff cannot answer the questions for applicants and apologized for any miscommunication that occurred. She asked further about the standards; Mr. Ellison explained that the Mayor & Commission set the standards. Ms. Smith then asked, if the building is to be moved, then how long they would have to accomplish that. Ms. Erwin explained that as long as they have a current building permit they can do the work and an extension can be requested if needed.

Mr. Ellison called for the vote. The motion to deny was unanimous.

2. 1397 PRINCE AVENUE

VAR-2013-12-2512

Petitioner: Edward Russell for Jimmy Wilfong
Zoning: C-N (Commercial-Neighborhood)
Tax ID: 114C4 F004
Request: A. Variance to reduce the required number of off-street parking spaces from 13 to 7

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

In Favor: Ms. Nancy Palmer spoke for Eddie Russell, the applicant, indicating that Mr. Russell was unable to attend since the meeting was rescheduled. She indicated that the proposed restaurant would be a good addition to the area. She listed the “near miss” parking options that are available for the restaurant use and said they should be considered since they meet the spirit of the law. One option is the on-street parking in the area, which is abundant. She noted that parking is nearby, but it is not immediately adjacent to the property. She next indicated that the restaurant developers have an agreement with Athens Regional Medical Center (ARMC) for the provision of five (5) spaces located in a lot adjacent to the restaurant property. The historic building, which will be preserved, is oriented on the property in a way that makes use of the property difficult. A sit-down restaurant is an appropriate use for the property.

Melissa Link said that the area has a significant amount of pedestrian and transit traffic. A draft corridor study for Prince Avenue calls for less required parking. Not considering the on-street parking is unreasonable. The applicant may be putting the cart before the horse by not requesting a variance to allow consideration of the on-street and off-site parking spaces.

Jimmy Wilfong, property owner, described the location of the off-site parking spaces allowed the restaurant by ARMC. He said that motorists will cut through the canopy area on the property, so it needs to be closed. There will be sufficient room for vehicle backing area without it.

Ian Daniel Ray said that there is no shortage of parking and there is a lot of pedestrian traffic in the area, so the neighborhood can support the additional restaurant use.

Lori Bork Newcomer said that a pedestrian-oriented business should be supported. A lack of parking is the business owner's risk.

In Opposition: None

Board Discussion: Ms. King asked if the property owner has a written parking agreement with ARMC. Mr. Wilfong replied that he did.

Mr. Ellison asked about the term of the lease. Mr. Wilfong replied that it is renewed annually.

Mr. Ellison asked about the proposed number of employees. Ms. Palmer replied that there will be five employees at all times; they will park either on the street or off the site.

Mr. Boggs asked about the proposed hours of operation. Ms. Palmer replied that the hours will be 11 AM to 11 PM.

Discussion followed about the off-site parking standards.

Mr. Simpson asked staff about the corridor study. Ms. Erwin replied that no actions had yet been taken on the draft study.

Mr. Ellison said that the Old Pal business had obtained a variance to operate without any parking, but such variances could create a parking problem for the area in the future.

Mr. Pritchett said that some differences with the Old Pal business are that this property has some parking spaces and that there are no abutting on-street parking spaces. However, there is a lot of pedestrian and bus traffic, and parking in the area remains plentiful at night. He asked, regarding standard #4, if this business would put additional parking pressure on adjacent businesses. Customers may not be aware of the off-site parking and use of the ARMC parking deck cannot be expected.

Mr. Shearer asked if all the parking spaces behind Normal Bar are used. Mr. Wilfong replied that everyone uses that parking lot. There is no parking problem.

Mr. Simpson asked why the project had not been first submitted for the Plans Review process. Mr. Wilfong replied that the only pertinent questions are the proposed number of customer seats and where the outdoor seating will be located. The outdoor seating will be under the canopy.

Mr. Pritchett said that standard #4 is met with the common ownership of the adjacent property.

Ms. Wiese said that pedestrian traffic will be heaviest for a business on this corner. She is familiar with the area and has never seen a parking problem. The community would support less parking.

Mr. Pritchett said that the shape of the lot and position of the building are different property conditions, which meet standard #1. The viable property uses are limited, which meets standard #2. Standard #3 is met because the property conditions were not the result of the applicant's doing. The benefits of standard #4 have been previously addressed. Standard #5 is met since the applicant is not asking to eliminate parking spaces. He added a caution that reduced parking can create a bad situation.

Mr. Simpson said that standard #4 is met with the hearing testimony. A variance would serve the community as a whole.

Ms. King asked where delivery trucks would park. Mr. Wilfong said that the trucks would block customers on the Oglethorpe side of the property, but would be there only a short time. Ms. Wiese added that delivery will be done outside business hours.

Mr. Shearer asked how the off-site parking distance is measured. Ms. Erwin replied that it is measured along where a pedestrian would walk.

Motion: Mr. Simpson made a motion for approval of the variance. Mr. Ellison seconded. The motion passed 5 to 2 (Boggs and Shearer opposed).

- 3. 134 BOULEVARD VAR-2013-12-2513**
Petitioner: Lori Bork Newcomer of Bork Design, Inc. for Russell Foster
Zoning: RS-15 (Single-Family Residential)
Tax ID: 163C3 B014
Request: A. Variance to increase the maximum lot coverage from 40% to 45%

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

In Favor: Lori Bork Newcomer, applicant, said that staff brought up the question of the side yard setback which they will be able to address by reducing the area within the proposed bath and closet. She indicated that the area of excess coverage really results from the proposed deck. The deck could be removed but it serves as a transition from the finished floor elevation to the ground outside. It also makes a better living space particularly for the screened porch.

Ms. Newcomer cited differences in area land values and taxes, noting that the proposed improvements to the property make the site more valuable and more usable. The expansion would bring the property more in line with its surroundings.

Melissa Link said the Historic Preservation Commission was supportive of the expansion. She noted that the property should be treated as an RS-8 zoned tract in light of its size. She added that currently the house is not suitable for contemporary living; she would like to give the owner the opportunity to improve his home. Ms. Link also indicated that she would rather see variances granted for some of the smaller lots rather than the larger ones since the larger ones would support much larger houses.

Chris Huntley said he supports the request. He felt the lot should be treated as an RS-8 zoned lot and that the open deck should not be considered as coverage.

In Opposition: None

Board Discussion: Mr. Ellison asked the applicant about the possibility of combining the subject property with an adjacent property under the same ownership. Ms. Newcomer replied that the property owner wishes to keep that lot separate for the added value.

Mr. Ellison asked staff if the lot coverage standard was due to scale or stormwater concerns. Ms. Eskew replied that the standard is for development, not for stormwater.

Ms. King said that the Board cannot pretend that the zoning is RS-8.

Mr. Simpson said that the Department of Transportation & Public Works had commented that the site plan does not show the quoted rain gardens and landscaping. Ms. Newcomer replied that the Board could make that a condition of approval.

Mr. Pritchett said that standard #1 is met due to the small lot size. Although a house is located on the property, Standard #2 is met due to economic limitations. Standards #3 and #4 are also met, but he is unsure about standard #5. Mr. Boggs said that he agreed.

Ms. Wiese asked if adjustment of the addition to meet the side setback would matter. Ms. Eskew replied that the difference would be about 24 square feet.

Ms. King asked if the project would comply if the deck was eliminated. Ms. Eskew replied that it would. Ms. Newcomer replied that the deck improves the aesthetic design. She added that the tax assessment addresses standard #2 since the building is not commensurate with the land value. She asked that the Board compare the house size with others in the area.

Mr. Pritchett said that standard #5 is met since the house is still below the average size in the neighborhood.

Mr. Ellison said that the request meets standards #1, 3, 4, and 5; however, regarding standard #2, the request is a convenience to the applicant because the lots could be combined.

Mr. Pritchett said that the loss of property value with a recombination would be a greater hardship.

Mr. Ellison asked the applicant about the difficulties of a recombination. Ms. Newcomer replied that it would forfeit an investment and the property owner would have to pay for a survey and a plat review fee. She asked if the Board would ever want to see the corner lot developed.

Mr. Ellison asked staff if the property line could be shifted. Ms. Erwin and Ms. Eskew replied that it would not be likely since it appears that the adjacent lot is nonconforming in size.

Mr. Pritchett said that standard #2 is met due to marketability.

Ms. King asked if landscaping should be an approval condition. Mr. Pritchett replied that it is not a concern.

Mr. Simpson said that a reduction of the addition would hurt its design, the project benefits the neighborhood, and the zoning handicaps the property owner.

Discussion ensued about whether to add a landscaping condition of approval.

Motion: Mr. Ellison made a motion for approval of the variance. Mr. Simpson seconded. The motion passed 5 to 2 (Boggs and Shearer opposed).

OTHER BUSINESS:

Directors Report: Ms. Erwin announced that there will be a meeting on February 12, 2014; there is one item on the agenda. She asked the Board if they were interested in having a training session sometime soon. There was discussion of whether they would want to meet on a regular meeting day if there were no variances to consider or some other day. They indicated that they would like to decide at the time of the February 12th meeting. At that date, they will know whether there are items to consider for a March meeting.

The meeting was adjourned at 5:20 p.m.

David Ellison, Chair

Brad Griffin, Director/Secretary