

**ATHENS-CLARKE COUNTY HEARINGS BOARD**  
**MINUTES**  
**April 8, 2015**

The Athens-Clarke County Hearings Board met and considered the following items at a public meeting at 3:00 p.m. on Wednesday, April 8, 2015, at 120 W. Dougherty Street, Athens, Georgia:

**MEMBERS PRESENT:** Ricky Boggs, David Ellison (Chair), Beverly King, Pat Shearer, and Laura Wiese  
**MEMBERS ABSENT:** Ed Simpson (Vice-Chair)  
**STAFF PRESENT:** Rick Cowick and Jane Erwin (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. Shearer made a motion to introduce all reports and documents into the official record. Ms. Wiese seconded the motion, which passed unanimously.
2. **Adoption of Minutes from the March 11, 2015 Hearings Board meeting.** Mr. Ellison made a motion to approve. Ms. King seconded the motion, which passed unanimously.

**NEW BUSINESS:**

1. **1045BAXTER STREET                      VAR-2015-03-492**  
Petitioner: Geoff Calhoun for Joseph C. (Cole) Causey  
Zoning: C-G (Commercial-General)  
Tax ID: 122D3A015  
Request: A. Variance to increase sign height from 15' to 17'-8"

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

**In Favor:** Geoff Calhoun, applicant, stated that the sign can be physically brought into compliance, but it would be a public safety issue. A telephone line would obscure the sign and the telephone company is unwilling to relocate the line. The current sign was installed to be above the height of the telephone line. The reduced sign structure height would place the reader board at about six feet above the adjacent driveway, which would obscure driver vision. It would also be low enough for people in the middle of the night to rearrange the reader-board letters. The message board will help the business grow.

Doc Eldridge, Baxter Street business owner and Chamber of Commerce president, said that Staff did exactly what they are supposed to do, but the Hearings Board can take a look at situations that might not fit into the spirit of the law. The Code was written for new development, which would have new forms of signage.

**In Opposition:** None

**Board Discussion:** Mr. Ellison asked Mr. Calhoun how the request meets variance finding #1. Mr. Calhoun replied that the telephone line is a unique condition. There are no other signs in the area that have the visibility being impinged upon by utility lines. After 35 years of being there the telephone line can be considered a permanent structure.

Mr. Ellison asked Mr. Calhoun how the request meets variance finding #6. Mr. Calhoun replied that there is no other place to locate the sign where it would be in compliance. Reducing the sign height creates problems of visibility.

Ms. King said that the variance should be conditioned upon the present property ownership.

Mr. Davis said that the Board could impose such a condition or an alternative condition would be to have the variance apply just to this particular sign structure.

Mr. Ellison asked Mr. Calhoun if he owns the building. Mr. Calhoun replied that he is leasing the building.

Mr. Ellison said that a condition restricting the variance to the present ownership would cause the applicant to come back for another variance.

Ms. Wiese said that she would approve the variance with a condition attaching it to the sign structure instead of to the owner, which would allow the sign to be taken down and another sign structure installed.

Discussion followed about the possible wording of a condition that would apply the variance to only the existing sign structure.

Ms. King said that Baxter Street is difficult to drive due to the numerous "double-decker" signs. The object of the sign ordinance is to bring signs into compliance so that it will be easier to identify the businesses.

Ms. Wiese said that she had never thought about drivers using that driveway and the sign blocking their view.

Mr. Shearer said that he is not sure that all of the seven variance findings have been met. The business has been in place for several years with conditions as they are. The only exceptional condition is the telephone line.

Mr. Ellison said that it is up to the Board to determine whether the telephone line is extraordinary and exceptional.

Mr. Wiese said that a lower sign could potentially block sight lines, which classifies as exceptional because not all properties on Baxter have that kind of driveway between buildings.

Mr. Shearer said that the object is to have conforming signs at some point in time and if the Board always make reasons why the standards are met, then he does not see the point.

Mr. Ellison suggested a condition that the reader-board cannot exceed 24.3 sf in area, the total sign area cannot exceed 44.8 sf, and the variance applies only to the current location of the sign. The sign being located at some distance from the roadway should ameliorate concerns about its size.

Ms. Wiese said that the sign has been there for some time, it is not oversized, and its distance from the street does not contribute to the sign clutter along the street. It is already at the requested height and a variance would preserve sight lines. Attaching the variance to the existing sign structure would alleviate concerns about a new owner potentially changing the sign, moving the sign, or making it more intensive.

Mr. Davis said that a condition attaching the variance to the current sign location would allow a new sign structure at that location. A condition attaching it to the existing structure would not allow that.

Ms. King asked Mr. Calhoun about the purpose of the reader-board. Mr. Calhoun replied that he has tried various forms of advertising. Baxter Street has a lot of traffic, but people do not know that the business is there. The reader-board is essential for community messages, such as a holiday message.

Discussion followed about possible approval condition wording.

**Motion:** Mr. Ellison made a motion for approval with the following conditions:

1. The reader-board shall not exceed 24.3 sf in area;
2. The two panels combined shall not exceed 44.8 sf in area;

3. The variance applies only to the current sign location and existing sign structure.

Ms. Wiese seconded the motion, which passed unanimously.

2.       **397W. RUTHERFORD STREET                   VAR-2015-03-513**  
Petitioner:     David Matheny of Armentrout, Matheny, Thurmond for Chandler Pike  
Zoning:         RS-15 (Single-Family Residential)  
Tax ID:         124B2G006A  
Request:        A.       Variance to increase lot coverage from 40% to 46%

**Mr. Cowick gave the staff report with the recommendation of denial.**

**In Favor:** David Matheny, applicant, displayed a drawing of the new house proposed for the property. The reasons for tearing down the existing house are rot, mold, and insufficient crawl space. The house will be rebuilt on the same footprint with additional square footage and the removal of an enclosed sun room that is currently only six feet from the adjacent house. This is a nonconforming lot in the RS-15 zone. If the lot was conforming, then a variance would not be necessary. RS-8 would allow more lot coverage, which the proposal would be very close to meeting. The driveway is subject to some change, but this is a common driveway between two properties and both property owners have enjoyed the driveway for access and parking. Being a good neighbor would be to leave the driveway there. There is disagreement between the county and the surveyor about whether there are one or two tracts of property. The first inclination was to combine the properties into one tract, but the county said that it already is one tract. There are discussions ongoing between the surveyor and an attorney about that. Staff says that it has been this way for 80 years, so there should never be any changes. The house is 1,600 square feet in size, which is relatively small for this neighborhood. We are not trying to make a huge house, which is a concern. There is a lot of concern about demolition also. It will be basically the same house, but a little taller. New owners need new things. Our lifestyles from 80 years ago to today have changed significantly. It does not make sense to not be able to at least add on a little bit. There are several houses in the neighborhood with 1,000, 1,500, and 2,000 square foot additions. She owns two adjoining lots and there were earlier discussions about tearing down both houses and building a new house. She is not going to do that regardless of the outcome of this meeting. The house at 393 W. Rutherford will also face the same situation where someone will want to add on to it and facing this same situation because that lot is also well under the RS-15 minimum lot size. We are trying to make a reasonable addition to make the house more compelling for future resale, for her lifestyle, to add on a sewing room, to redo the master bedroom, and add a couple of bedrooms upstairs to make it more palatable for guests. It is a very tiny house that very few people could live in by today's standard. We could entertain removing some of the driveway to help with the coverage situation. It was there when she bought it, so we thought it practical to leave it that way.

**In Opposition:** Amy Kissane, Athens-Clarke Heritage Foundation director, said that the house is a contributing building in a National Register historic district. She does not want the house to be torn down. Five Points is one of the most desirable places to live in Athens. New homes built there should be built to fit the lot, not the other way around. We have seen a lot of moderate size homes torn down in Five Points. It is not a neighborhood of mansions. It is desirable for the character it has, which is not large homes. The homes are being replaced by houses that are four, five, and six times larger than the house that was there. It seems to me that people are designing their homes first, then finding lots that are available and try to stick their home on that lot. This does not sound that insensitive as what we have seen. There are few protections for residents of Five Points who like where they live and like the scale of the homes that are around them. You have the opportunity here to discourage the demolition of a historic home.

Susan Field, resident of Five Points neighborhood, said that she supported Ms. Kissane's comments and the staff's recommendation of denial for the variance.

**Board Discussion:** Mr. Ellison asked Mr. Matheny when the former street right-of-way was closed. Mr. Matheny replied that it was already divided between properties when his client bought the house.

Mr. Ellison asked if there is a recorded easement. Mr. Matheny replied that there is not an easement. This happens all over when an alley is divided between two adjoining properties.

Mr. Ellison asked if the neighbors have been using both sides of the driveway for the past 20 years. Mr. Matheny replied that they have. Mr. Ellison said that removing part of the driveway could impair easement rights of the neighbors.

Mr. Ellison asked Mr. Matheny if he had spoken with the neighbors about removing the driveway. Mr. Matheny said that he had. The two property owners have worked together to repave the driveway.

Mr. Ellison said that it is a unique circumstance to have former right-of-way on the property. Ripping up the driveway would be impinging upon the neighbor's easement.

Mr. Cowick said that the driveway has never been a separate piece of property. It went straight from being a right-of-way to private property ownership. Mr. Matheny said an attorney and a surveyor disagree.

Mr. Ellison asked if other permutations had been tried to be sure this is the minimum amount of variance. Mr. Matheny replied that it is all about the amount of asphalt on the driveway. No one else is dealing with a road between two houses that two families enjoy and use.

Ms. Wiese asked what the new plan does with the existing gravel driveway and carport behind the house. Mr. Matheny replied that a portion of the asphalt driveway would be used to turn into the other end of the carport. The same amount of hardscape coverage would still exist. About 300 square feet of asphalt beyond the carport could be removed, but it is being used for parking for a rental cottage. About 12 feet of driveway width is on Ms. Pike's property and about 8 to 10 feet is on the Campbell property.

Mr. Cowick said that there is about 600 square feet of driveway on the subject property beyond the carport. Mr. Matheny said that is correct, but not all of that could be removed and still use the other end of the carport as planned. From the back of the carport to the end of the drive is about 300 square feet.

Mr. Ellison said that the former road right-of-way is exceptional. It is remarkable that the subject property owner is not getting the full use of the property since the neighbor is parking on it. It is an undue and unnecessary hardship because they are not getting the full use of the lot and ripping out the driveway would be messing with the neighbor's driveway rights. The circumstances are not the result of the applicant because the predecessors deeded it this way. Granting the variance would be greater than negative impacts. It will comply with the setbacks. It is now very close to the neighboring property. Also, this is a small parcel. The request is for the minimum variance. I think this meets all five findings.

Ms. Wiese asked if the variance decision would have any bearing on whether this would become a historic district. Mr. Cowick replied that the variance is for lot coverage. Unless there was a condition that the variance applied to this site plan, then the variance will run with the property regardless of what is built on it.

Ms. Wiese asked that if decisions are made that made demolition not a possibility, the variance would still exist, so an addition could still be done. Mr. Cowick replied that the Board is considering revising a zoning standard. The Historic Preservation Commission has to deal with the design of property improvements, no matter what the zoning standard is. Mr. Davis said that the variance would exist regardless of what happens with historic designation.

Ms. Wiese said that she is stuck on whether this is the minimum variance. Every option has not been exhausted yet. A variance should not be attached to this property when the historic designation issue is unresolved. It could be figured out later that the variance was not necessary because there may be an option that has not been considered yet. Since it is not a huge amount of square footage, there may be a way of doing it without need of a variance.

Mr. Ellison asked the applicant again if this is the minimum variance request. Mr. Matheny said that they had looked at a lot of different plans. This variance would not impact historic designation in any way. Whether or not we kept the house, a variance would still be necessary. Part of the driveway could possibly be removed, which would slightly reduce the lot cover percentage from 46% to perhaps 44% or 43%. We have really pared it down.

Ms. Wiese said that if the possibility exists of requesting a lower lot cover percentage, then that does not meet the minimum variance finding. It is not an issue with the house plans. It is just that there may be a way of reducing lot cover that has not yet been explored, so it is unsure that this is the minimum variance.

Mr. Boggs said that he agreed.

Mr. Shearer said that he would agree with a denial because this is not the minimum variance.

Ms. Wiese said that there is an option to table to obtain more evidence that this is the minimum variance.

Mr. Shearer asked if both properties would have a normal driveway if one side was torn up. Mr. Cowick replied that he considered it to be a case of abutting driveways. The Mayor & Commission are often closing rights-of-way and splitting the property between the adjoining property owners, so he does not consider this to be exceptional. Each property has a standard driveway width on its own side of the property line. The neighbors are using both sides because they can, not that they need to. Most people have a single-lane drive, not a double drive extending 200 feet. The only required parking spaces are those right behind the house. All the rest is superfluous. The neighboring property has two houses and the residents of the rear house are parking as shown on the aerial photograph. He said that he is not sure if the subject property owner letting the neighbor use the driveway provides a prescriptive easement. However, the neighbor has a sufficient driveway width on their own lot. They can back out or provide a turnaround area like the subject property has. Mr. Shearer said that this is why it is not the minimum variance.

Mr. Ellison said that the use by the neighbor for this long provides prescriptive rights to continue its use.

Stacy Campbell, neighbor, said that she shares the driveway, uses it for basketball, and has put a lot of money into using it. We do not park on the street; we use it for lots of different reasons.

Mr. Ellison asked if the repaving of the driveway used the same footprint. Ms. Campbell said that they did. All they did was repave it.

Ms. Wiese said that she has not heard today that this is the absolute minimum.

Discussion followed about a possible tabling.

Mr. Ellison asked Mr. Matheny about a table. Mr. Matheny said that the request is the minimum variance. We do not want to get rid of the carport. There is nothing else he can do to preserve the amicability of two neighbors sharing the driveway. You are asking us to pit one neighbor against another because our only choice right now is to reduce the driveway to where the neighbor cannot use it. To get to the back of the property, you have to go by other cars parked in the driveway. We are going to be creating a problem between two neighbors. She needs this pittance of 674 square feet to do what she wants to do to this house.

Discussion followed about the timing of a table.

Ms. Wiese said that there is other hardscape, such as the gravel drive and carport. Mr. Matheny said that the gravel drive could go away, but then it would become a courtyard. Ms. Wiese said that it could affect the lot coverage, so this would not be the minimum variance. Mr. Matheny said that a two percent

difference would not make a difference to anyone in the neighborhood. Ms. Wiese said that the possibility of a lower percentage means that this is not the minimum variance.

Ms. King said that variance finding #1 is met. Mr. Ellison said that all findings are met.

Mr. Boggs said that there is uncertainty about this being the minimum variance. The Board is not here to give options.

**1<sup>st</sup> Motion:** Mr. Boggs made a motion for denial. Mr. Shearer seconded the motion, which failed by a vote of 3 to 2 (Ellison, Wiese opposed).

**2nd Motion:** Mr. Ellison made a motion for a table for a maximum of two months. Ms. Wiese seconded the motion, which passed unanimously.

**OTHER BUSINESS:**

*Directors Report:* Mr. Cowick said that he had no report.

The meeting was adjourned at 5:05 p.m.



David Ellison, Chair



Brad Griffin, Director/Secretary