

ATHENS-CLARKE COUNTY HEARINGS BOARD
MINUTES
October 14, 2015

The Athens-Clarke County Hearings Board met and considered the following items at a public meeting at 3:00 p.m. on Wednesday, October 14, 2015, at 120 W. Dougherty Street, Athens, Georgia:

MEMBERS PRESENT: Ricky Boggs (Vice-Chair), Nancy Burk, Myung Cogan, Pat Shearer, and Joey Tucker

MEMBERS ABSENT: Ed Simpson (Chair)

STAFF PRESENT: Marc Beechuk, Rick Cowick, Jane Erwin, and Brad Griffin (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. Tucker made a motion to introduce all reports and documents into the official record. Ms. Burk seconded the motion, which passed unanimously.
2. **Adoption of minutes from the September 9, 2015 Hearings Board meeting.** Ms. Cogan made a motion to approve. Mr. Tucker seconded the motion, which passed unanimously.

OLD BUSINESS

1. **480 MILLEDGE TERRACE VAR-2015-06-1208**
Petitioner: David Ellison for Virginia Feher & Charles Grier
Zoning: RS-15 (Single-Family Residential)
Tax ID: 124D4 A021
Request: A. Variance to increase accessory structure from 25% to 36% of size of principal structure

Ms. Erwin gave the staff report with the recommendation to Deny

In Favor: David Ellison, applicant, said that the property was built in the 1940's or 1950's. The current property owners purchased it in 1994. In 2000, the accessory structure limitation was put into the Code and it was revised in 2005. The owners were warned earlier this year that the garage must be either torn down or repaired or they would be cited. They looked into repairing it, but are unable to do so due to extensive termite damage. A new foundation is needed due to the slope of the property to prevent moisture buildup. The most feasible thing to do is to completely replace it with a new one. The proposed building will have similar dimensions as the one on the adjoining property at 440 Milledge Terrace. Each variance standard has been met. The extraordinary and exceptional conditions for this lot are the narrowness of the lot, which prevents a side addition to the house, and a significant maple tree between the house and accessory structure. The tree adds value to the property and the owners do not wish to remove it for a house addition. The variance is necessary to preserve their property rights. It is not a convenience to cut down a tree that has been there for as long as they can remember. The owners want more storage space. Houses from the 1940's and 1950's did not have much storage space for contemporary living standards. They need room for their day-to-day living and their hobbies, which are painting, pottery, and gardening. Space is required to store all of their materials and to engage in these hobbies. Therefore, this is not a mere convenience, but necessary for them to enjoy a property right. The third standard is whether or not they caused these circumstances. They did not plant the tree. The property was platted and the structures built by the time they purchased it. The benefit is to allow a traditional Five Points house to remain without a further increase in the size of the principal structure. There is a perverse incentive under our current rules that to have a larger accessory structure, a larger principal structure must be created. On Hope Avenue there is a great-looking house, but it is huge. The

accessory structure on that property is much larger than any other accessory structure in the neighborhood because that house is so much larger than every other house in that neighborhood. There is a growing trend that a house of this character and size is quickly becoming a thing of the past. There is a huge change in the level of remodeling and rebuilds that render this particular property unique due to its size. The benefits of granting this would be to allow the owners to have a traditional Five Points home without adversely impacting any of the adjacent uses. [He distributed to the Board letters from neighboring property owners.] The neighbors say that they have no problem with this whatsoever. The proposed outbuilding will be the approximate size of 440 Milledge Terrace. This is not going to create an adverse impact on adjacent uses. It is not going to be out of character with the neighborhood. This requested variance is the minimum required. The owners need a place to park their vehicles and to store their gardening equipment and materials for all their hobbies. This is the minimum amount to provide them relief.

Charles Grier, property owner, said that he and his wife have tried to maintain the 1950's character of the house and preserve the neighborhood. Accessory garages add charm to the houses in the neighborhood. We have a lot of hobbies. We are artists and make pottery and woodcarvings. The proposed garage would not be out of place for the neighborhood. It would be an improvement to the property. The house has been rewired and the lead paint removed. We try to make it as nice as possible.

Virginia Feher, property owner, said that she and her husband want to keep the property as a lasting legacy. They have seen the neighborhood change with "McMansions." What they have planned will keep the character. On Westview Drive several interesting 1960's houses were torn down and replaced with what she refers to as "banks." She has been in Five Points since 1982 and they really care about the neighborhood, so this is not really just about them.

In Opposition: None

Board Discussion: Mr. Shearer said that he is in sympathy with the landowners, but he cannot see how all five standards have been met. Even if the tree is an extraordinary condition, the request is not for the minimal variance. Even with Mr. Ellison's assertion that the variance is necessary for the preservation and enjoyment of a property right and not merely as a convenience, he cannot agree that all five standards have been met.

Mr. Burk said that the request is not for a property right, but for the enjoyment of the owners' hobbies. She is frustrated that the condition of the building does not allow for repair. If it did, we would be talking about something that might be possibly grandfathered and we could be talking about maintaining that size. Since they cannot repair it, we are only talking about a rebuild, so we must review the existing ordinances as they are today, not when the building was built in the 1940's or 1950's. She cannot see a basis for granting the variance even to the existing structure.

Mr. Tucker said that the hardship is that the building needs to be repaired, but it appears preserving it cannot happen. Several variance standards are being met, but not all of them.

Ms. Cogan said that not all variance standards are being met even with some extraordinary property circumstances.

Motion: Ms. Burk made a motion for denial. Ms. Cogan seconded the motion, which passed unanimously.

2. 510 BETHANY COURT VAR-2015-08-1699

Petitioner: Marty Edward Coleman
Zoning: RS-25 (Single-Family Residential)
Tax ID: 113C1 B004
Request: A. Variance to increase front yard pavement from 25% to 37.2%

Mr. Beechuk gave the staff report with the recommendation to Deny

In Favor: Mr. Coleman, applicant, said that he had rented homes before buying this house and did not think that permission was needed to add a basketball court and a little piece of cement beside the house to put his boat on. He did not want to mess up the grass between the driveway and the boat parking pad, so he filled in that area with cement. He did not intend to go over the property line. The new filled in area allows an area for kids to play in a safe area off the street. Prior to pouring the concrete, he made sure that the utility lines would not be affected.

Ms. Coleman, wife of the applicant, said that the basketball goal allows the children to not play in the unsafe street. The property surveyor told them that the 25% limitation is for the entire yard, not just the front yard. They did not know that they would have to go through all of this.

In Opposition: None

Board Discussion: Mr. Shearer thanked the applicant for their military service and for thinking about the safety of the neighborhood kids. However, he finds that variance standard #1 is not met, since the property seems to be like most others in the neighborhood, and #2 is not met. Standard #3 is not met since the work was done by the applicant. Standard #4 is met. The house and yard are among the best in the neighborhood. Standard #5 is also not met.

Mr. Boggs said that looking at this after it has already been done makes this difficult. If the applicant could do it over again, there are other places on the property that make sense. Standard #5 is not met because this could have been done in the backyard or done in a way that would not impede the front yard or go over the 25% limitation in the front yard. Standard #3 is difficult to approve because it was due to the applicant's actions rather than a special condition.

Ms. Burk said that parking the boat further back on the property would have also pushed the basketball area further back. The requested variance would not have been granted even if requested prior to the work being done.

Ms. Cogan said that the applicants were misinformed. Ms. Burk replied that the survey was done for the variance application.

Ms. Burk said that she does not see how the variance could be approved. She explained to the applicants how all five findings must be met.

Mr. Tucker said that the amount of concrete is needed for the boat. Tire strips are not a solution.

Motion: Mr. Shearer made a motion for denial. Ms. Cogan seconded the motion, which passed unanimously.

NEW BUSINESS:

- 1065 BAXTER STREET VAR-2015-09-2043**
Petitioner: Arahn Hawkins of the Kroger Company for Gray, LLC
Zoning: C-G (Commercial-General)
Tax ID: 122D3 A020A & 123D3 A020C
Request: A. Appeal of Interpretation re: Floor Area Ratio (FAR)

Mr. Griffin explained the process to appeal a staff interpretation and explained the information from the staff that had been provided to the Hearings Board.

In Favor: John Noell, attorney, said that this is a Staff interpretation of the zoning ordinance, that there is a right to appeal that interpretation, and the Hearings Board has the authority to overturn that interpretation. The fuel canopy is a structure and is included in the minimum floor area ratio (FAR) calculation. The language is clear so there is no room for interpretation. Athens-Clarke County has adopted and enforces the International Building Code (IBC) per Sec. 7-1-1-A-1, which defines floor area ratio (FAR) as including a fuel canopy, which does not have exterior walls. He read the "gross floor area" definition in the IBC and the "floor area" definition in the ACC zoning ordinance. The Planning Director is saying that a fuel canopy has no floor. The term "floor" is not defined in the zoning ordinance, although the "floor area" and the FAR definitions use the term "floor." If not defined, words are to be given their common meaning per Sec. 9-4-17. He read Webster's Dictionary and the American Standard Dictionary definitions of "floor." By this analysis, the fuel canopy has a floor. The arguments in staff report paragraphs #5, #6 and #9 are not germane to the issue. The Planning Director states that the FAR definition specifically excludes interior parking lots, and that a fuel canopy area functions similarly to an interior parking area. A parking use is defined in the zoning ordinance as having parking as its principal use. However, parking is not the primary use of the proposed fuel center. The only question is whether a fuel canopy is counted for FAR. He handed out additional copies of his written argument

In Opposition: None

Board Discussion: Mr. Tucker said that the issue is about determining FAR and he feels that the canopy is covering an area that nothing else can be built under. Therefore, what the canopy is covering should be considered as floor area.

Ms. Burk said that the issue is what constitutes a "floor." While Athens-Clarke County has adopted the IBC, it is still in its purview under "home rule" to further define any portion of any adopted law. She read the "floor area" and the "gross leasable floor space" definitions in the zoning ordinance, which both exclude interior parking spaces. Parking decks have floors, but are excluded from the FAR. Is a gas station more like a living space or a parking space? To her, the fuel canopy is more like a parking space since she parks her car when pumping gas. The canopy is more like the exclusion.

Mr. Davis advised the Board that the IBC was not adopted as a reference for the zoning code.

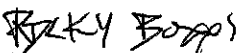
Mr. Shearer said that the IBC is not the official reference for zoning-related interpretations. He is basing his decision on the history of what Athens-Clarke County has done up to now as far as what has been included and excluded for the floor area ratio.

Motion: Mr. Shearer made a motion for denial of the appeal of the interpretation. Ms. Burk seconded the motion, which passed 4-1 (Tucker in opposition).

OTHER BUSINESS:

Directors Report: Mr. Griffin thanked the Board for their service. Ms. Erwin said that no applications had been received for the regularly scheduled November meeting. A previous variance request denial has been appealed and will be considered by the Planning Commission in December.

The meeting was adjourned at 4:20 p.m.


Ricky Boggs, Chair


Brad Griffin, Director/Secretary