

## ATHENS-CLARKE COUNTY HEARINGS BOARD

### Minutes

September 14, 2016

The Athens-Clarke County Hearings Board met and considered the following items at a public hearing at 3:00 p.m. on Wednesday, September 14, 2016, at 120 W. Dougherty Street, Athens, Georgia.

**MEMBERS PRESENT:** Sharon Bradley, Nancy Burk, David Ellison, Mike Lord, Pat Shearer, Ed Simpson (Chair) and Joey Tucker

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Vicki Buschbom, Rick Cowick, Jane Erwin, Amber Eskew and Gavin Hassemer (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. Ms. Burk seconded the motion, which passed unanimously.
2. **Adoption of minutes from the August 10, 2016 Hearings Board meeting.** Mr. Simpson made a motion to approve. Ms. Bradley seconded the motion, which passed unanimously.

#### OLD BUSINESS

##### 1. **511 GAINES SCHOOL ROAD VAR-2016-04-1085**

Petitioner: Baseline Surveying & Engineering, Inc. for EMS Management, Inc.

Zoning: C-O, GSRC, A (Commercial-Office), (Gaines School Road Corridor), (Airport Overlay District)

Tax ID: 233D1 E001

Request: A. Variance to eliminate requirement for sidewalk along the street frontage on Ponderosa Drive

B. Variance to eliminate requirement for sidewalk from the building to the street

#### **Mr. Hassemer gave the staff report with the recommendation for Approval of Variance A and Denial of Variance B**

Ms. Bradley asked if either the front door or side door could be used for public access. Mr. Hassemer replied that either could be used.

Mr. Simpson asked about the possible accessible path options. Mr. Hassemer explained the various options.

Mr. Lord asked if the walk has to be accessible or can it include steps. Mr. Hassemer replied that it has to meet accessibility standards so no steps would be allowed.

**In Favor:** Mr. Huey Atkins, EMS Management, said that he appreciates the Staff recommendation on the frontage sidewalk variance request. No sidewalks exist in the adjoining neighborhood, so a sidewalk along Ponderosa would lead to nowhere. Regarding the requested waiver of a sidewalk from the building to the street, to meet the one-inch drop per one foot distance would require fill dirt and switchbacks. He distributed a photo of the property to

the Hearings Board. The proposed shelter is needed to keep the ambulances heated or cooled. They are willing to stripe a sidewalk down the side of the driveway to the handicap ramp. This is not a retail establishment. There is no signage by the street.

Mr. Shearer asked Staff to confirm whether the walk could run along the drive to the ramp. Mr. Hassemer replied that the walk can be placed beside the driveway. To run a walk from the front door to the street would require some fill dirt or some type of structure, but they could run a walk along the Ponderosa side of the drive.

Mr. Simpson asked the applicant about that option. Mr. Atkins said that they would stripe part of the driveway. Mr. Hassemer replied that the driveway is already substandard, so it cannot be made more substandard by reducing its width for the walk.

Mr. Lord asked if the walk could run beside the drive. Mr. Hassemer replied that it could.

Mr. Simpson asked the applicant if they would be willing to run the walk beside the drive. Mr. Atkins replied that such a walk would be easier than running a walk to the front door.

**In Opposition:** None

**Board Discussion:** Ms. Burk said that she lives within a block of the subject property and serves on the Cedar Creek Homeowners Association, which maintains the street trees that would be potentially affected by the frontage sidewalk in question, so she is recusing herself from this case.

Mr. Shearer said that he agrees with the Staff recommendation for waiving the frontage sidewalk.

Mr. Ellison said, regarding the frontage sidewalk variance request, that standard #1 is met due to the topography, the existing trees, and the desired separation between the commercial use and the adjoining residential neighborhood. Standard #2 is met due to the need to maintain the trees to preserve privacy of the rear yard, which is a property right. Standard #3 is met since the trees that would be impacted were planted by the neighborhood and the applicant did not create the steep slope. Standard #4 is met since the variance would preserve the mature trees, which buffer the neighborhood. Standard #5 is met since this is the minimum variance necessary.

**Variance A Motion:** Mr. Ellison made a motion for approval. Mr. Shearer seconded the motion, which passed unanimously (Burk abstaining).

Mr. Ellison said that Variance B does not meet standard #2 since the variance would simply be a convenience for the applicant.

Mr. Lord said that he is concerned with this request since a variance runs with the property and that placing a walk beside the drive is a viable option.

Mr. Simpson asked the applicant to consider placing a walk beside the drive. Mr. Atkins said that they would consider that option.

**Variance B Motion:** Mr. Simpson made a motion for denial. Mr. Lord seconded the motion, which passed unanimously (Burk abstaining).

**2. 605 SUNSET DRIVE**

**VAR-2016-05-1168**

Petitioner: Williams & Associates for Nell J. Medders

Zoning: RS-8 (Single-Family Residential)

Tax ID: 122A1 C008

Request: A. Variance to reduce lot depth from 80' to 74.80'

**Ms. Erwin gave the staff report with the recommendation for Denial**

Mr. Simpson asked if the applicant is responsible for bringing sanitary sewer to the site. Ms. Erwin replied that they would be.

**In Favor:** Mr. Jon Williams, applicant, said that the property owner has owned the subject parcel since 1997. It is a rental property for a family. This is an unusual case since it is a remand by the Planning Commission of the previous Hearings Board consideration. Amendments have been made to the original application. The existing garage had been a previous issue, but it will be removed. The new lot can be built on with no additional variances. The new house plan is taken from infill housing plans commissioned by Athens-Clarke County. The variance is for less than a 10% lot depth reduction. We need to talk about the five standards, but the Hearings Board should look at this in a common sense way. The sanitary sewer is a non-issue since it will be provided. The minimum 8,000 sf lot size is being met. The *Traditional Neighborhood* Future Development designation supports 4,000 sf lots, so this is following the Comprehensive Plan. All but three lots on Edwards Drive have had this type of subdivision. If the right-of-way was narrower, the lot depth would be sufficient. There are any number of ways to skin the cat and argue either way. Only one zoning standard is not being met. None of this is self-imposed. There are special conditions in that there are more than half of the lots on the street have the same depth. The hardship to the applicant is because the proposed lot will add value to the community, which wants infill development on 4,000 sf lots. We are trying to do the right thing for the neighborhood. If he could buy two acres in the neighborhood, he could put seven houses on it and the lot sizes would not matter. There has been anticipation that those large subdivision standards would apply even in infill situations. You want smaller lots, you want infill housing, and you want housing for families. This house plan was picked so you know exactly what you are getting on this lot. This is the minimum request because the lot is not going to get any smaller.

Nell Medders, property owner, said that she would like the opportunity to do what is proposed, which will be very beneficial to Edwards Drive. She has invested a lot in this house on Sunset and would do the same for the new house.

**In Opposition: None**

Mr. Simpson said that we seem to be quibbling over a few feet. He asked the applicant if they had talked to the adjacent neighbor. Mr. Williams replied that more property to the north could not be obtained due to the close proximity of the neighbor's garage. They are not asking for a rear setback variance. He has not heard any negative comment from the neighbor.

Ms. Burk said that the dominant street in the area is Sunset Drive and all the lots along it have the same depth, which outweighs the argument for the pattern on Edwards Drive being followed. Edwards Drive seems like a side street. The existing lot could be a gorgeous deep lot.

Mr. Tucker said that he did not think the new lot would affect Sunset Drive.

Mr. Simpson said that the new lot would not be seen from Sunset Drive. This is infill housing, which would benefit the whole neighborhood.

Mr. Williams interjected that the proposal will create a better street façade along Edwards Drive. He said that he has other subdivision options. Ms. Burk replied that the Board has to deal with what has been placed before them today, which needs a variance. Mr. Williams agreed that he cannot create the new lot without a variance, unless he can acquire additional property.

Mr. Ellison asked the applicant to explain their statement that the rear of the lot has no value. Mr. Williams replied that the rear of the lot has no value for the existing structure without the ability to subdivide the lot and make it productive. Mr. Ellison asked the applicant if he agrees that the land has use without improvements constructed on it. Mr. Williams replied that it would if someone wants a yard that big. Mr. Lord responded that there are many back yards of similar size in that area, so he has a problem with understanding the assertion that that space is unusable when it could be used for a garden or any number of things. Mr. Williams said that another accessory structure could be placed there. Mr. Lord said that the rear yard is just not usable for the exact proposed purpose, so he has a hard time finding that standard #2 is met.

Mr. Ellison asked about the applicant's mention of a prescriptive easement in regard to the street. Mr. Williams replied that there are random rights-of-way all over the county. He does not know how this right-of-way width was obtained. Mr. Ellison asked whether that would be speculation. Mr. Williams said that it would be.

Mr. Simpson said that variance standards #4 and #5 go together. The proposal furthers the Comprehensive Plan intent for infill housing to rejuvenate such neighborhoods and utilizing that space. If standard #4 could be satisfied, then standard #5 becomes satisfied. Standard #4 is satisfied since the proposal would provide greater good than what exists now, but it is questionable whether that is so compelling as to allow bending other standards. There is nothing extraordinary or exceptional about the property because it is similar to other pieces of property. A lot of things, such as a swimming pool, could be placed in the rear yard. The request is really an economic consideration.

Mr. Ellison said that standard #4 is met, but he does not tie standards #4 and #5 together. To meet #5, you first have to find that there is an identified hardship, and there is not one. This property is not exceptional. Standards #1, #2 and #5 are not met. Standards #3 and #4 are met.

**Motion:** Mr. Ellison made a motion for denial. Mr. Lord seconded the motion

Ms. Bradley said that she agrees with Mr. Ellison's assessment of the findings. She said that the notion that the Board is quibbling about a variance for only five feet is not a strong argument.

Mr. Simpson said that he is still looking for a way to develop the area, to improve the property under the Comprehensive Plan. Regarding standard #5, it is the least deviation from the Comprehensive Plan, regarding the infill concept. However, the request has to meet all five standards.

Mr. Williams interjected that, if that is the case, then he does not understand how any variance is granted for any lot that does not meet the zoning standards. Mr. Ellison replied that he respectfully disagrees with that position.

The motion passed unanimously.

## **NEW BUSINESS**

### **1. 5074 SMOKEY ROAD                      VAR-2016-08-1979**

Petitioner: Emanuel Jennings

Zoning: AR (Agricultural Residential)

Tax ID: 152 017

Request: A. Waiver of Community Tree Management 5 year development moratorium

### **Ms. Buschbom gave the staff report with the recommendation for Approval**

**In Favor:** Mr. Emanuel Jennings, applicant, said that he cleared the land for a single-family home. He still needs to clear more of the property to square off the property. He was uneducated about the notice requirement, so the oversight was an honest mistake.

Ms. Bradley asked if the applicant did the work himself or hired a professional contractor. Mr. Jennings replied that he hired someone to help with the work.

Ms. Pam Knox, Community Tree Council, said that the Council educates the public about the value of trees and regulations regarding tree cutting. The Council discussed the variance request and found that, except for the notice requirement, all the other tree management requirements have been met. She commends the applicant for offering to preserve 50% of the tree canopy and encourages him to provide street trees.

**In Opposition:** None

**Board Discussion:** Mr. Shearer said that he agrees with the Staff approval recommendation that the three variance standards have been met. Mr. Lord and Mr. Simpson agreed that the standards have been met.

**Motion:** Mr. Shearer made a motion for approval. Mr. Tucker seconded the motion, which passed unanimously.

### **2. 1070 S. MILLEDGE AVENUE                      VAR-2016-08-2001**

Petitioner: Williams & Associates for James & Jessica Whitley

Zoning: C-O, MAC (Commercial-Office), (Milledge Avenue Corridor)

Tax ID: 124B2 F001

Request: A. Variance to increase wall height from 4' to 6'-9" within the front yard

### **Ms. Eskew gave the staff report with the recommendation for Approval**

**In Favor:** Scott Haines, applicant, said that the Whitley family had purchased the property recently and renovated the house. They are seeking visual separation from the adjacent non-residential use. This is a unique single-family use along a commercial and student-oriented corridor. The front yard is the primary leisure space. Any other use on this property would have been allowed to have a higher wall. The wall will be slightly visible from Milledge Avenue. The

variance sought is the minimum amount needed. Historic Preservation Commission (HPC) approval is also needed. He read a letter received from an adjacent neighbor in support of the variance.

**In Opposition:** None

Ms. Bradley said that she had reviewed proposals for restoring this property while serving on the Historic Preservation Commission. The Staff report is well done. The variance standards have been met. The fence is a sensitive treatment without adverse impact.

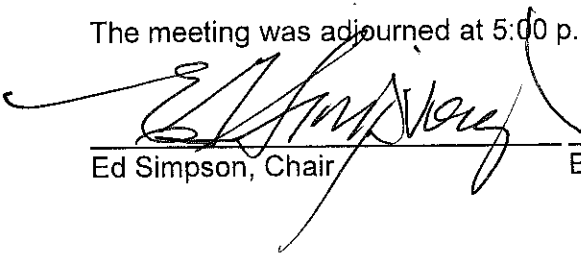
Mr. Simpson said that standard #1 is met due to the natural barriers on the property and the residential use in this area. Standard #2 has been addressed and the neighbors are in support. Standard #3 is met due to the buffer and placement of the house. Standard #4 is met due to the letters received from the neighbors in support and the needed HPC approval. Standard #5 is met due to the fence placement, the neighbors' support, and the preservation of the natural canopy.

**Motion:** Mr. Tucker made a motion for approval. Ms. Burk seconded the motion, which passed unanimously.

#### **OTHER BUSINESS**

*Director's Report:* Mr. Cowick reported that three applications have been received to be heard next month. Regarding the issue of a Future Development designation that had been mentioned as a factor in one of the deliberations, he said that the Future Development Map is used for guidance when making zoning decisions, but that several zoning districts are compatible with each Future Development designation. If there is a strong feeling that smaller lots should be created in a certain area, then the area should go through the rezoning process instead of random individual lots obtaining variances.

The meeting was adjourned at 5:00 p.m.

  
Ed Simpson, Chair

  
Brad Griffin, Director/Secretary