

**ATHENS-CLARKE COUNTY HEARINGS BOARD**  
**Minutes**  
**November 9, 2016**

The Athens-Clarke County Hearings Board met and considered the following item at a public hearing at 3:00 p.m. on Wednesday, November 9, 2016, at 120 W. Dougherty Street, Athens, Georgia.

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

**MEMBERS ABSENT:** Joey Tucker

**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. Simpson made a motion to introduce all reports and documents into the official record. Mr. Lord seconded the motion, which passed unanimously.
- 2. Motion for Reconsideration of VAR-2016-09-2278** made by Ms. Bradley, seconded by Mr. Lord, and passed 5 to 1 (Shearer in opposition).

**NEW BUSINESS**

**1. 160 UNIVERSITY DRIVE VAR-2016-09-2277**

Petitioner: Jeff DeLoach for Ron Menzies  
Zoning: RS-15 (Single-Family Residential)  
Tax ID: 173C1 E003  
Request: A. Variance to reduce structure separation from 10' to 4'  
B. Variance to increase lot coverage from 40% to 41%

**Mr. Cowick gave the staff report with the recommendation for Approval with condition of Variance A and Approval for Variance B.**

**In Favor:** Jeff DeLoach (applicant) said that he and Mr. Menzies had a good initial meeting with the planning director, that Staff has been great in working through these issues with Mr. Menzies to get a very good result, which is a very reasonable improvement of the subject property. The Staff-recommended condition of moving the structure a foot further from the property line is acceptable. Mr. Menzies is a very experienced general contractor. This is not new for him.

Mr. Menzies said that he and his wife had recently purchased the subject property. The existing garage is very dilapidated and rain water easily comes in, so it is not useful. The wish is to maintain the same traffic pattern. Locating the new garage ten feet away from the neighboring garage would make it hard to use the existing turnaround area in the rear yard. The two large

water oak trees are the only large trees on the property. Two arborists have visited the property and both have said that the required 10-foot building separation would require that both trees be removed because they would not survive. The Staff-recommended condition is acceptable. The neighbor's driveway was constructed a long time ago. A survey was done and surprised the adjacent owner that part of his driveway was on the subject property. It is about a two-foot encroachment in some areas, which comes out to about 300 square feet. When you have a small lot and you cannot exceed 40% lot coverage, then you quickly reach the maximum allowance, thus the reason for the requested variance to exceed 40%.

Peter Nichols, adjacent property owner, states that he and his father, who shares ownership of the adjacent property, find that the applicant's proposal is acceptable. The driveway was built about 45 years ago and his father and the subject property owner at that time thought the driveway ran along the property line to where the two garages abutted. Now it has been discovered that it was mistakenly located. There was a meeting about that with Staff who are okay with the existing situation. He is in favor of approving the proposal to move the garage over.

Mr. Simpson announced ex parte communication with Mr. Nichols during a site visit.

**In Opposition:** None

**Board Discussion:** Mr. Ellison asked if the Staff recommendation is to reword the variance so that the building separation is reduced from ten feet to five feet. Ms. Erwin said that it can be worded that way in a condition of approval.

Mr. Ellison said that the requested Variance A meets the five review criteria. The trees are an extraordinary condition; the strict application of the zoning standard would create an undue and unnecessary hardship; that the special conditions do not result from the actions of the applicant; that the benefits of granting the variance are greater than any negative impact, such as the encouragement of infill development and preservation of trees, and that five feet would be the minimum variance to satisfy the extraordinary condition.

**Variance A Motion #1:** Mr. Ellison made a motion to approve Variance A with the condition that it be for five feet rather than four feet. Ms. Burk seconded the motion.

Mr. Cowick said that the condition is meant to request a five-foot setback from the property line to avoid the fire rating requirement, which would actually be a six-foot separation between buildings.

Mr. Menzies said that the closer the building is to the trees, the less likely they are to survive. He is okay with a five-foot separation, but not a five-foot setback.

Mr. Cowick asked the applicant if he is okay with constructing the building with a one-hour fire rating. Mr. Menzies replied that he would rather do that and keep it further from the trees.

Discussion followed between the Board and applicant.

Mr. Ellison withdrew his motion, which was agreed to by Ms. Burk.

Ms. Burk suggested that the variance refer to both the building separation and a property line setback since the neighboring building could be removed in the future. Mr. Menzies replied that he would agree to a four-foot setback. Mr. DeLoach said that the proposal meets the setback standard, so there is no need for a setback variance.

**Variance A Motion #2:** Mr. Lord made a motion to approve Variance A. Mr. Shearer seconded the motion, which passed unanimously.

Mr. Simpson asked Staff if the lot coverage would be 39% if the driveway encroachment area was removed from the lot coverage calculation. Ms. Erwin replied that is correct for deducting the size of the encroachment without reducing the size of the lot.

Mr. Simpson said that the variance review criteria, per the discussion and the points made by Staff, have been met.

**Variance B Motion:** Mr. Simpson made a motion to approve Variance B. Mr. Shearer seconded the motion, which passed unanimously.

## **2. 424 N. CHASE STREET RECONSIDERATION VAR-2016-09-2278**

Petitioner: Judson Harper  
Zoning: RM-1 (Mixed Density Residential)  
Tax ID: 122B2 J006  
Request: A. Variance to reduce front setback from 7.5 feet to 3.94 feet from future right-of-way for front porch

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

Ms. Bradley said that the porch was made wider, but not deeper. She does not understand why there is a front setback violation. Ms. Erwin replied that there is more structure within the required front setback. Mr. Cowick added that the original porch was nonconforming, but any addition has to meet the current setback standards.

Mr. Lord said that this would have been explained had the applicant consulted the Planning Department prior to construction.

Ms. Burk said that the porch now encroaches more into the required setback area. Mr. Cowick added that it is intensifying the nonconformity.

Ms. Burk asked if the improvement is considered as a structure like the rest of the house. Ms. Erwin replied that it is a structure, but there are different setback standards for the house and unenclosed architectural features like the porch.

**In Favor:** Mr. Judson Harper, applicant, said that the setback is based on a future right-of-way that will probably never be used. He understands that he did not correctly go through the zoning permit process because he did not have a clue as to what he was doing. He bought the house for

his son. An inspection was made of the new porch framing. He asked why the violation was not caught at that time.

Ms. Erwin said that Staff did not initially have a scaled site plan. Mr. Davis added that the building inspectors have no legal responsibility to identify the applicant's mistakes.

Mr. Harper continued his testimony by saying that if Chase Street is not going to be widened, then the setback is not really an issue. The structure is not really permanent. It is just a stoop.

Mr. Simpson said that it is not known for sure that the street would never be widened. Mr. Harper replied that it will not probably occur in our lifetime.

Mr. Harper continued his testimony by saying that the issue is not so much the cost of taking it off, but not being able to do anything with the house for nine months. The request is for a little relief. It is not super critical. He is asking for a reasonable understanding to keep the porch.

**In Opposition:** None

**Board Discussion:** Mr. Ellison said that the Board is sympathetic to the applicant's plight. He asked the applicant if there was an exceptional property condition. Mr. Harper replied that it is really nice. The neighbors like it and think that it is a huge improvement and a nice addition to the neighborhood. It makes the neighborhood feel safe for people walking by. It's in a historic district. If a portion of the porch is taken off, then it will be asymmetrical with the roof. Half a porch will look odd.

Mr. Ellison asked the applicant if he would agree that there are a lot of other historic houses in the area. Mr. Harper replied that they are all historic.

Mr. Ellison asked the applicant to address the variance criterion that the benefits of granting the variance would be greater than any negative impacts. Mr. Harper replied that selling the house would do wonders for the market for all the houses in the area and increase tax revenue.

Mr. Ellison asked the applicant to address the variance criterion that this is the minimum variance to afford relief. Mr. Harper replied that removing the left side is unnecessary.

Ms. Bradley said that the hardship is an ordinance that was imposed 50 years after the construction of the house and street, which did not result from the actions of the applicant.

Mr. Simpson said that the difficulty of variance criterion #3 is that the applicant is asking for forgiveness rather than permission.

Ms. Bradley said that the variance should be granted because the ordinance was enacted 50 years after the building of the house. One of the benefits is to allow an aesthetic and functional improvement to the historic structure that does not have any negative impact on any future adjacent uses, and in view of the input of the Transportation & Public Works Department. A 50-foot right-of-way cannot be imposed without causing the loss of the structures along that street.

Exercising our discretion in a fair way means to avoid the perception of a punitive action. The strict application of the zoning standard does not advance any purpose under the ordinance. The HPC approved this change because it had no negative impact on the historic district. All of the standards are met and the variance should be granted. Otherwise, it is an overly strict application on the Board's part and an unnecessary hardship on the applicant.

Mr. Ellison said that the applicant had nothing to do with the enactment of the ordinance. He stated that someone who has already taken action should not be disqualified from obtaining a variance. He is not concerned with variance criterion #3.

Ms. Burk said that the variance standards are joined in the ordinance by the word "and." The "condition" that is under review in variance standard #3 is the additional property improvement, not the ordinance. The zoning requirement was in place when he bought the property, so it was not imposed upon him.

**Motion #1:** Ms. Bradley made a motion for approval. Mr. Ellison seconded the motion, which failed 3 to 3 (Burk, Lord, Shearer in opposition).

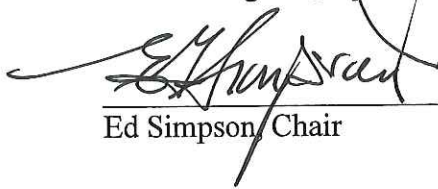
Discussion followed about possible further motions that the Board can take.

**Motion #2:** Ms. Bradley made a motion for a table. The motion failed for lack of a second.

#### OTHER BUSINESS

- 1. Adoption of minutes from the October 12, 2016 Hearings Board meeting.** Mr. Simpson made a motion to approve. Ms. Burk seconded the motion, which passed unanimously.
- 2. Planning Director's Report:** Ms. Erwin reported that the application deadline for the December meeting is this upcoming Friday.

The meeting was adjourned at 4:25 p.m.

  
Ed Simpson, Chair

  
Brad Griffin, Director/Secretary

