

**ATHENS-CLARKE COUNTY HEARINGS BOARD**  
**Minutes**  
**January 11, 2017**

The Athens-Clarke County Hearings Board met and considered the following items at a public hearing at 3:00 p.m. on Wednesday, January 11, 2017, 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, 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. Ms. Burk seconded the motion, which passed unanimously.
2. **Adoption of minutes from the November 9, 2016 Hearings Board meeting.** Mr. Tucker made a motion to approve. Ms. Bradley seconded the motion, which passed unanimously.

**NEW BUSINESS**

**1. 112 BOB WAGES ROAD VAR-2016-11-3004**

Petitioner: Kristi Bradshaw  
Zoning: AR (Agricultural Residential)  
Tax ID: 033 001  
Request: A. Waiver of 5-year development moratorium

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

**In Favor:** Kristi Bradshaw (applicant) said that this is all new to her and her husband. They bought this property, but the house needs to be torn down. They want to bring in a mobile home. They were not aware that they had to get a permit to take down trees. They hope the Board will approve the request.

**In Opposition:** None

**Board Discussion:** Mr. Ellison said that the requested variance meets review criterion #1 since the tree clearing had been necessary to place the house and septic system on the property. Criterion #2 had been met since the tree removal was the minimum necessary. Criterion #3 had been met since the remaining tree canopy meets the tree management standards. There is no requirement for tree canopy on the property, but there are still an ample number of trees.

**Motion:** Mr. Ellison made a motion to approve the variance to remove the 5-year development moratorium with the condition that the limits of clearing be limited to those shown on the site plan.

Mr. Ellison said that the condition is to avoid someone in the future clear cutting the property. If there was a future desire to remove more trees, then the Board would have to approve it. [Staff notes that the condition would only apply within the 5-year moratorium period.]

Mr. Simpson asked if the condition was necessary. Ms. Buschbom said that it would prevent clear cutting of the property, which would otherwise be allowed.

Ms. Bradley seconded the motion, which passed unanimously.

**2. 1225 SOUTH MILLEDGE AVENUE VAR-2016-12-3120**

Petitioner: David Matheny of Armentrout, Matheny, Thurmond, PC for Barrett Investment Properties, LLC  
Zoning: C-N (Commercial-Neighborhood)  
Tax ID: 173A3 B009  
Request: A. Variance to increase distance to off-site parking from 200' to 328' from site served

**Ms. Erwin gave the staff report with the recommendation for a Table.**

**In Favor:** David Matheny (applicant) said that he hoped that this would be a relatively simple approval. He was not aware that there was this much information needed. The parking calculations were spelled out on the site plan that there is a total requirement of 48 spaces for the building. They have 41 spaces. He did not think that there were any questions about those spaces because the plans have basically been approved, except for the needed seven parking spaces. The property across Morton Avenue has parking and not all of those spaces are being used, so eight off-site spaces on that property are being sought for this project. They thought this would resolve the last issue. Everything else has been approved. There are 80 seats in the restaurant, which requires 20 parking spaces and there are 260 sf of potential patio area, which would require an additional 2.6 spaces. They only have 15 spaces available, so that is why the extra spaces are needed. The maximum walking distance of 200 feet results in the variance request. Having to come back for another variance would be a hardship on the restaurant because they have been trying to open for quite some time and they have not been able to start construction yet. They can work with Staff to clear up some of the remaining issues. It is not going to change the fact that patrons will have to travel over the maximum 200-foot walking distance. They do not want to go through the process of an off-site parking agreement until the variance is approved for the distance. Commissioners Wright and Bell are supportive of this variance request. Five Points is a walking community and there are many situations where people walk much farther than 200 feet, so this is not a request that is out of the ordinary. There are some properties in the area that walking from the very corner of the property to the front door of an establishment would probably be over 200 feet within the same property. Across the street the Marker 7 restaurant requires some off-site parking, which is allowed to have a 1,000-foot travel distance. Commissioner Bell is working with a committee to resolve this issue for the

whole Five Points area. Mr. Matheny requested that the Board decide whether the requested distance is unreasonable. Granting approval with a condition of meeting the Staff concerns would be a great way to work through this and pursue the project permit. More and more restaurants are coming into the Five Points area and parking is becoming more of a problem, but they have the ability to provide the necessary parking spaces.

**In Opposition:** None

**Board Discussion:** Ms. Bradley asked if the applicant would address the crosswalk concern of the Transportation & Public Works Department. Mr. Matheny replied that it will be addressed if necessary, but the public frontage sidewalk is already there.

Ms. Burk asked about the intended use of the patio addition. Mr. Matheny replied that there is not a definite plan for it yet. It could be used for a waiting area or as a dining area, so the required parking for it used the square footage calculation.

Ms. Burk said that the ordinance calls for calculating the minimum number of parking spaces from the lesser of either the number of seats or the total square footage, not a combination of the two. Mr. Matheny replied that the seating calculation should be less for the patio area. Those calculations can be provided to Staff.

Mr. Ellison asked what the required parking for The Pine restaurant was based on. Mr. Matheny said that it is based on seating. They will base all the restaurants for the entire building on seating.

Mr. Lord asked about the location of the other needed off-site parking spaces and if another variance would be needed. Mr. Matheny replied that they are located on an adjacent lot where the parking is already established. This is the first that he has heard that there is a question about the usability of those 15 spaces. It will be established that those spaces are specifically for the Sakura Restaurant.

Ms. Burk asked if there was a physical barrier between those 15 off-site parking spaces and the restaurant. Ms. Erwin replied that there is only a grade change. Mr. Cowick added that pedestrians would need to walk from those spaces around to the front of the restaurant.

Mr. Lord asked if an additional variance would be needed to use those off-site spaces. Ms. Erwin replied that the walking distance to those spaces would need to be calculated.

Mr. Lord asked if those are on a separate piece of property. Ms. Erwin replied that they are. Mr. Matheny said that they have discussed a property combination, but that would result in noncompliance with the Code for other issues. Mr. Lord said that the requested variance at issue would not be enough distance to include these other off-site spaces. Mr. Matheny replied that he did not consider those spaces as part of the request since those spaces are already established. Mr. Cowick responded that the eight spaces in question now are also considered to have already been established.

Mr. Simpson said that approval of the variance could be granted with a condition of an off-site parking agreement. Mr. Cowick said any off-site parking will require such an agreement regardless of whether a variance is granted for the distance.

Mr. Shearer asked about the use of the adjacent parking by other existing restaurants. Ms. Erwin replied that a loss of their parking could cause them to close. Mr. Simpson said that the other restaurants have been counting those spaces in their total number of required spaces. Mr. Matheny said that those restaurants have been in place for many years; they were not a change of use and did not trigger the parking requirement. Ms. Erwin responded that parking may be looked at, but the minimum number may not change that much with such small restaurants. In this case, the change of use from retail to restaurant is what causes this parking issue.

Ms. Burk asked if using those 15 spaces on the adjacent lot will affect the Mediterranean restaurant. Mr. Matheny replied that it will not affect that restaurant; they have secured some spaces in that lot. Ms. Erwin reminded the Board that the new restaurant use is what has caused the issue in question now and not the existing establishments.

Mr. Shearer asked if the applicant would prefer a table or denial. Mr. Matheny replied that it is not going to change the need for a walking distance variance wherever parking is found.

Mr. Simpson said that he wants to see this work and be successful, but a motion to approve would need several qualifiers. It is confusing about whether a second off-site parking distance variance would be needed. Mr. Davis advised the Board that they are not granting a blanket variance for any distance over 200 feet, but rather for a specific distance. Mr. Cowick said that the walking distance from the required parking on the other off-site parcel is unknown. Ms. Erwin said that the variance is for a specific distance, but it is not tied to a specific property unless the Board makes that a binding condition.

Mr. Ellison asked if an interpretation could theoretically be made that the walking distance does not have to be along the street. Ms. Erwin replied that the ordinance specifically requires that it be measured along the street.

Mr. Tucker asked about granting the variance for a longer distance. Mr. Matheny replied that the motion could be simply made that an additional 200 feet of travel be granted with the condition that all other questions by Staff be satisfied before issuance of a permit.

Mr. Davis said that the travel distance is measured along a sidewalk or other pedestrian path separated from traffic.

Mr. Ellison asked if a parking lot was a pedestrian path. Ms. Erwin replied that a parking lot is considered a vehicular path.

Ms. Burk asked if the Board could require a safe pedestrian path as a condition of approval.

Mr. Ellison said that the request is for 328 feet. If the applicant finds that a greater distance is needed, then they can come back before the Board for another variance or interpretation. He finds that the request meets the five review criteria. The property is exceptional in that the building was built in 1960 and was all retail. It has become predominantly restaurant, which requires more seating and parking, which makes it exceptional and extraordinary. The strict Code application would create an undue and unnecessary hardship because even if this was all retail, more parking would be needed. They are running out of options for this property. The special conditions do not result from the actions of the applicant. The benefits of granting the variance is greater than any negative impacts. The request is for an additional 128 feet, which is not a great distance. The request is consistent with the intent of the Comprehensive Plan, many patrons will be walking there. It is the minimal variance, which is clearly shown by the provided plan.

**Motion:** Mr. Ellison made a motion to approve the variance as requested. Ms. Burk seconded the motion.

Ms. Bradley said that the restaurant could still not open without the additional 15 required spaces because they are probably further than 328 feet. Ms. Burk replied that she would rather see this variance granted than denied.

Mr. Tucker suggested increasing the distance. Ms. Burk replied that the applicant did not request a greater distance. Mr. Tucker said that the Board is not tied to the requested distance. Mr. Simpson asked if the Board had to be concerned with the other off-site parking spaces. Ms. Erwin replied that the request is only for distance.

Mr. Simpson asked if the Board had to be concerned with the required off-site parking agreement. Ms. Erwin replied that the applicant will have to provide that to Staff.

Mr. Matheny said that he would appreciate an approval for a greater distance that would include the other 15 off-site parking spaces. Mr. Cowick offered to get a scale and calculate the needed distance. He reminded the Board that one of the findings, that the variance be the minimum necessary, is unknown at this time.

Mr. Shearer reminded the Board that one of the findings is that the benefits outweigh the negative impacts on the development of the adjacent uses. He asked if the 15 spaces used by the Sakura Restaurant will have negative effect on the Mediterranean. Mr. Ellison responded that the off-site parking lot is not the same property as the Mediterranean.

Mr. Tucker offered a friendly amendment to increase the off-site parking distance to 500 feet.

Mr. Ellison asked the applicant if 500 feet would be sufficient to cover the additional 15 spaces. Mr. Matheny replied that it would be.

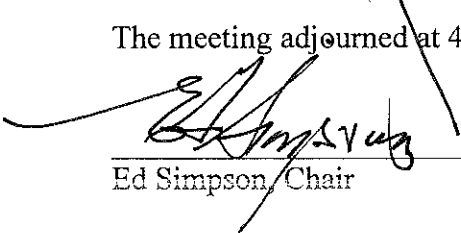
Mr. Ellison seconded the friendly amendment. Mr. Ellison and Ms. Burk accepted the amendment, which passed unanimously.

Subsequently, the amended primary motion passed unanimously.

**OTHER BUSINESS**

**Planning Director's Report:** Mr. Cowick and Ms. Erwin reported that two applications have been received for next month's meeting and that they will also be proposing an amendment to the bylaws.

The meeting adjourned at 4:05 p.m.



Ed Simpson, Chair



Brad Griffin, Director/Secretary