

## ATHENS-CLARKE COUNTY HEARINGS BOARD

### Minutes

March 8, 2017

The Athens-Clarke County Hearings Board met and considered the following items at a public hearing at 3:05 p.m. on Wednesday, March 8, 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:** Rick Cowick and Jane Erwin (ACCUG Planning); Bill Berryman (ACCUG Attorney); Bob Faucett and Brad McCook (ACCUG Transportation & Public Works)

#### 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 February 8, 2017 Hearings Board meeting.** Mr. Simpson made a motion to approve. Mr. Tucker seconded the motion, which passed unanimously.

#### NEW BUSINESS

1. **2460 W. BROAD STREET      VAR-2017-02-336**  
Petitioner: James C. Warnes for Pinckney Alston Steiner, III  
Zoning: C-G (Commercial-General)  
Tax ID: 121 004A  
Request: A. Variance to allow encroachment into and elimination of the 75' ACC riparian buffer

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

**In Favor:** Jim Warnes, petitioner, said that the stream is intermittent. The purpose of the ordinance is to protect water quality. Only the US Army Corps of Engineers (USACE) has the authority to approve the removal of the streambed, but local requirements must also be met. USACE and the State Environmental Protection Division (EPD) office have approved the proposal. The question is whether the variance will be granted for the additional 50 feet of buffer that Athens-Clarke County (ACC) imposes. The first 25 feet of the local 75-foot buffer is the same buffer the State imposes. The stream runs onto the property as an outfall of a stormwater pond on adjacent property. It flows into a dry ditch. An intermittent stream has flowing water during the wet season, but is normally dry. It does not have continuous flowing water year round. If you look at it today, there is no flowing water in that ditch. USACE issued a nationwide permit due to the minimal impact on the environment, protection of the aquatic environment and the project being in the public interest. EPD gave approval following USACE

approval due to the fact that the plan maintains or improves water quality downstream of the project. The EPD also mandates that the post-construction stormwater management systems be maintained for pollutant removal to protect water quality. The project has to comply with the stormwater management ordinance, which requires utilization of the Georgia Stormwater Management Manual. EPD uses the same manual. The requirements are the same. The stormwater management system will have to be maintained. Approved storm filters will accomplish the same result. Regarding the finding of unique circumstances, the riparian buffer is along the road frontage. The adjacent property does not have an environmental area. Regarding the finding regarding the preservation of property rights, the developer desires to use an alternative to the buffer so that the entire site can be utilized without jeopardizing the health and safety of water. The property owner wants to develop the subject property in the same way as the property owner next door whose stormwater is being dumped into his ditch. Regarding the finding of the benefits being greater than any negative impacts, both USACE and EPD have stated that this project will have benefits with minimal impact. A 50-foot vegetative buffer is along the western side of the subject property. The highway is to the south, commercial properties to the east, and the property to the north is uphill. The runoff ultimately goes into the Middle Oconee River. The benefit is to allow the owner to develop the site in the same way as the guy next door, but with minimal impact. He has to protect the water quality, which is the whole purpose of the ordinance. The Staff report does not argue that the filters will not protect the water quality; the Staff report just argues that the natural buffer is better without any support for such a proposition. Regarding the finding of self-imposed conditions, the owner inherited the property and did not impose the stream buffer contiguous to the road frontage. The economics of development have changed in the last nine years. This is just the first step; a rezoning of the property and changes to the plan are needed to comply with ACC requirements. The waiver is needed before going through the rest of the planning process. Regarding the finding that this is the minimum environmental area encroachment, USACE and EPD have approved the project. The additional 50 feet of ACC buffer is no longer required. If you are piping the stream, providing filters for the runoff, and providing a stormwater detention area that comply with all the requirements of ACC and the State, then do you need an additional 50 feet of buffer whose only purpose is to provide water quality? Regarding the finding of no other violations of other laws or impairment of water quality, this will maintain water quality, and trap pollutants, sediment and water runoff. Regarding mitigation, USACE requires the purchase of credits to protect another environmental area while this one is eliminated.

David Stoniecki, project engineer, said that he designed the plans. A 36-inch pipe runs under Beech Haven Drive and discharges into a dry ditch, then becomes an intermittent stream, then goes under Broad Street. The stream is open for 285 feet on the subject property. The developer would like to develop the subject property in similar fashion to the adjacent property. A storm pond and an open pond will be used as the best options with the highest-rated filter, which is required to be maintained.

**In Opposition:** Nat Belger (5 Beech Haven Drive) said that he is the closest resident. He asked if there would be guaranteed maintenance of the proposed stormwater management system. Much of the land is developable. He would like to keep the front of the property as it exists. The highway has only a few remaining natural areas. The buffer preserves a natural area near

the entrance to a future park on land acquired by Athens-Clarke County. He opposes the variance request.

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Mr. Simpson asked Mr. Belger to locate his property on a PowerPoint slide map. Mr. Belger pointed out his property. He added that he has the first right to purchase the adjoining property at 10 Beech Haven Drive.

Mr. Belger read a letter in opposition from Dustin Tilley, a resident of 1 Beech Haven Drive. The letter was entered into the public record.

**Board Discussion:** Mr. Simpson asked about inspections of stormwater management systems. Mr. Faucett replied that Athens-Clarke County inspects such systems every three to five years, while the property owners are required to perform annual inspections and maintenance.

Mr. Ellison asked if the applicant found the property to be unique due to the riparian buffer location along the road frontage. Mr. Warnes replied with agreement.

Mr. Ellison asked about the 2008 rezoning of the property. Mr. Warnes replied that the C-G zoning had previously only 210 feet of depth from the road until the property owner asked for an extension of the C-G zone to the north. That request was approved by the Mayor and Commission with conditions of a 50-foot western vegetative buffer and access only through Beech Haven Drive, which is now owned by Mr. Belger. The private drive has not been studied for potential commercial driveway use.

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Mr. Ellison asked if the commercial lot and the driveway had the same ownership during the rezoning. Mr. Warnes replied that it was all one property at that time. He explained how the current property line and drive locations are arranged.

Mr. Ellison asked if the only access to the subject property was through someone else's property. Mr. Warnes replied that access would be through another property, but it has the same owner.

Mr. Ellison asked if the concept plan would require another zoning action. Mr. Warnes replied that it would need to go through the zoning process to remove the restricted access condition. The plan also needs several changes to comply with the zoning code.

Mr. Ellison asked if the property could be accessed without impacting the riparian buffer. Mr. Warnes replied that a driveway could be constructed on the western end without encroachment.

Mr. Cowick reminded the Board that the concept plan is non-binding; the variance would run with the property regardless of the type of development.

Mr. Shearer asked Staff to confirm the feasibility of a driveway along the western end of the subject property. Ms. Erwin replied that the westernmost driveway shown on the concept plan appears to be out of the buffer.

Mr. Lord said that access appears feasible on both the eastern and western ends of the subject property without a buffer variance and there are other possibilities for development. Mr. Warnes replied that a new curb cut would not be approved on the eastern end because it would be too close to Beech Haven Drive.

Mr. Lord said that there are other development possibilities that would not require the variance since 70% of the land is developable. The concept plan needs the variance, but there are plenty of other development options. He added that the real impact to the economic value is that the buffer area is in the front. The value of commercial property is in the frontage, so that is where this property owner is really being impacted. Mr. Lord replied that it is an inconvenience, but not a unique circumstance.

Mr. Ellison said that the applicant is asking for a 50-foot variance from the State buffer to the ACC buffer. He asked if the State completely eliminated the 25-foot buffer. Mr. Warnes replied that they had approved the proposed work within the 25-foot buffer to pipe the creek. The State approved it on the condition that it meets the local requirements.

Mr. Ellison asked if it would be sufficient relief if the Board reduces the ACC buffer to 25 feet. Mr. Stoniecki replied that the State approved the developer's request to encroach into and eliminate the 25-foot buffer. He added that the westernmost driveway shown on the concept plan would encroach into the riparian buffer should it remain. Mr. Cowick replied that such a variance would be much less significant than this request.

Mr. Berryman advised the Board that the ACC buffer is not a 50-foot buffer that begins at the back of the State buffer. The ACC buffer overlays the State buffer, has a slightly different definition, and the rules for obtaining variances are different. The State decision regarding the State buffer has no effect on the local riparian buffer.

Ms. Burk asked if the stream was being relocated. Mr. Stoniecki explained that the stream is not being relocated, but rather eliminated. The water now being collected into the stream would dissipate into the water table. USACE credits would be bought to remove this upper basin drainage and preserve the lower basin downstream.

Mr. Lord asked about the biodiversity impact. Mr. Stoniecki replied that this is commercial property and its biodiversity will be impacted as with other commercial development. The State allows credits to expand an environmental area elsewhere in the same river basin. Mr. Lord replied that the negative impact will be local, but the benefit will be elsewhere.

Mr. Ellison asked if there is little or no economic value of the property without a variance. Mr. Warnes replied that the statement is practically true due to lack of use of the road frontage. You can put a driveway in there and build stuff all over the back of the land, but nobody is going to do it.

Mr. Simpson stated that this is a concept plan and there could be an entirely different use. Mr. Warnes said that is correct.

Mr. Simpson said that at one time a hotel was proposed. You could put driveways into a hotel and parking that would not require use of the frontage. Mr. Warnes replied that the hotel had been proposed nine years ago and there are five new hotels in the vicinity, so the viability of this site for a hotel is greatly diminished.

Ms. Burk said that the developer could build on the property and the stream could even be a part of the development as landscaping. Mr. Warnes replied that would be the case if you could find someone who would think it would be economically viable for them to build that kind of project.

Mr. Shearer said the other agencies have given their permissions, but the developer also has to adhere to the community standards. He does not find that the first finding is met since other properties have such riparian buffers. The second finding is not met since there is enough property for development without impacting the riparian buffer. He is also not convinced that the third finding is met. The variance cannot be issued without all findings met.

Ms. Bradley said that at least three findings are not met. Other uses are possible. The finding about having little or no use of the land has not been met. Regarding the proposal's benefits, the applicant stated that water quality will be improved, but she is not convinced.

**Motion:** Mr. Lord made a motion to deny the variance based on the previous discussion. Mr. Shearer seconded the motion

Mr. Ellison said that the first finding is met due to the road frontage location of the riparian buffer. He said that all of the other findings have also been met, except that there is no economic hardship.

Mr. Shearer and Mr. Lord said that they disagreed with Mr. Ellison's findings.

Mr. Tucker said that he agreed with Mr. Ellison's finding in that the road frontage location of the riparian buffer makes it a unique circumstance for this site, but lacking necessity of the variance for the preservation of property rights makes it difficult to approve.

Mr. Lord said that he disagrees that this is the minimum variance necessary to develop the site.

Mr. Simpson said that he disagrees that there is little or no economic value of the property without the variance.

The motion passed unanimously.

**2. 248 FEATHERWOOD HOLLOW            VAR-2017-02-343**

**Petitioner: Michael Sorrells**

**Zoning: RS-25 Single-Family Residential)**

**Tax ID: 153B C006**

**Request: A. Waiver of 5-year development moratorium**

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

**In Favor:** Michael Sorrells, applicant, said that he was unaware of the ordinance. He wanted to clear the trees around his house so no tree would fall on it, which had previously happened to him.

Jerry Brinegar (239 Featherwood Hollow) said that there is a reason why the neighborhood is called Cherokee Forest. The damage has been done; the downed trees on the site are a mess. He is the homeowners' association president. He supports the variance. He will provide the neighborhood covenants to the applicant. He does not want the property to sit there and lie fallow for five years. His concern is to protect the lot.

Sheila Lawson (165 Featherwood Hollow) said that she is in favor of the variance. She is concerned with the property being an eyesore and its potential erosion. It needs to be seeded and landscaped.

Andrea Lingard (180 Featherwood Hollow) said that she supports what her neighbors said.

Mr. Brinegar asked if the rest of the tree canopy on the property would be conserved. Ms. Erwin replied that a bit more canopy could be removed, but the property needs to comply with the ordinance coverage standard.

**In Opposition:** None

**Board Discussion:** None

**Motion:** Mr. Ellison made a motion to approve the variance with the condition the remaining tree canopy is to be conserved. Mr. Tucker seconded the motion.

Mr. Shearer asked the applicant if he is okay with the proposed approval condition. Mr. Sorrells replied that he is.

The motion passed unanimously.

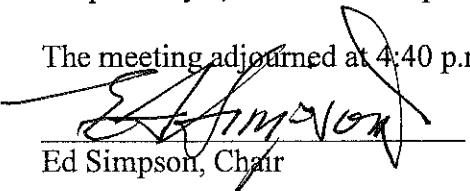
## **OTHER BUSINESS**

### **1. Amendment to Hearings Board Rules of Procedure**

Mr. Simpson stated that the amendment regarding the time limits for public comment had been approved last month.

### **2. Planning Director's Report:** Ms. Erwin reported that the April application deadline had not passed yet, but that she expects at least one variance request.

The meeting adjourned at 4:40 p.m.

  
Ed Simpson, Chair

  
Brad Griffin, Director/Secretary