



**ZONING BOARD OF APPEALS
MINUTES
Monday, November 13, 2023
City Commission Meeting Room
509 North McDonough Street**

I. Call to Order at 7:30PM

Members Present: KC Boyce (Chair), Kristin Miller (Secretary), Brett Peanasky, and Joanna Quillen

Members Absent: Andrew Rutledge (Vice Chair)

Staff Present: Jennings Bell, Kay Evanovich, and Aileen de la Torre

II. Approval of Minutes

Approval of Minutes from the October 9, 2023, meeting.

Motion by Mr. Peanasky, second by Ms. Quillen, minutes unanimously approved as presented.

III. Old Business

A. Barbara Blum, property owner, has applied for a variance from stream buffer requirements for the property located at 343 Winnona Drive, Decatur, GA 30030. *This application was deferred from the September 9, 2023, meeting.*

Ms. Blum, property owner, was in attendance but had been unable to submit the revised plans prior to the meeting.

The Board expressed concern that both they and the public had no time to properly review the application and requested it be deferred. Ms. de la Torre indicated there was sufficient time to include it in the December meeting. Ms. Blum was amenable to deferring the application.

Motion by Ms. Miller, second by Ms. Quillen, the Zoning Board of Appeals unanimously approved a deferral to the December 11, 2023, meeting.

B. Mark Terry, property owner, has applied for a variance from setback requirements for the property located at 884 Derrydown Way, Decatur, GA 30030. *This application was deferred from the September 9, 2023, meeting.*

Mr. Terry, property owner, presented the application. He stated the existing residence is already over the side setback and the proposed porch will only extend an additional 22 inches into the front setback. Mr. Terry submitted slides showing the proposed site plan and a 3D rendering of the new residence, which no longer has a full-width front porch but rather two partial-width ones. He stated the porch will be an unobtrusive addition and showed additional homes along Derrydown with front porches.

Mr. Boyce opened public comment. There being none, Mr. Boyce closed public comment and opened board discussion.

The Board expressed appreciation that Mr. Terry addressed their feedback from the previous meeting so thoroughly. They had no concerns regarding the side setbacks and stated the proposed porch will be minimally intrusive.

Motion by Ms. Miller, second by Ms. Quillen, the Zoning Board of Appeals unanimously approved a variance for front and side setbacks.

- C. Derek Bigham, property owner, has applied for a variance from Setback requirements for the property located at 102 5th Avenue, Decatur, GA 30030.

Ms. de la Torre stated the applicant requested another deferral in order to address Board comments.

In response to questions from Christopher Phillips of 128 5th Avenue, Ms. de la Torre indicated the deferral was requested that afternoon so there was no time to inform the public beforehand. Additionally, Mr. Boyce explained a deferred application stays open and any changes that are material to the requested variance requires documentation of those changes.

Motion by Ms. Miller, second by Ms. Quillen, the Zoning Board of Appeals unanimously approved a deferral to the tentative January 8, 2024, meeting.

- D. Artis Lisbon, property owner, has applied for a variance from stream buffer and setback requirements for the property located at 208 Olympic Place, Decatur, GA 30030.

Darrell Johnson of JDM Consultants, engineer and representative, presented changes completed from comments at the previous meetings. He stated the residence was shifted 15 feet into the rear setback, which requires an additional setback variance but gets it out of the 50-foot stream buffer. He stated the area where the driveway crosses the stream will be piped but they are maintaining the underground retention. Mr. Johnson presented the changes that address Board comments from previous meetings.

In response to a question from Mr. Boyce, Mr. Johnson indicated they are requesting two variances, one for rear yard setback and one for stream buffer intrusion.

In response to questions from Mr. Peanasky, Mr. Johnson indicated they looked for the most practical location to install an extended pipe in order to prevent pooling.

In response to questions from Ms. Miller and Mr. Boyce, Mr. Johnson indicated per code the rear setback is 30 feet and they are requesting 15 feet. He stated the most recent site plan shows the correct footprint, which does not include the decks as drawn on the architectural plans.

In response to a question from Ms. Miller, Mr. Johnson indicated there will be additional driveway impervious because of moving the residence back but they are using permeable materials so they will get stormwater credit.

The Board requested Mr. Bell speak to the application regarding mitigation measures and staff recommendations.

Mr. Bell stated staff recommendations specify permeable materials for the driveway to facilitate infiltration, additional infiltration systems with bio retention to capture the first two inches of runoff, and incised banks that could be stabilized against further erosion. He stated the extended

pipe under the driveway would handle some but not all of the incised banks, and will revisit that during permit review if the variance is approved.

In response to a question from Mr. Boyce, Mr. Bell indicated a substantial portion of the driveway still appears to be concrete and he recommends the full driveway be permeable.

In response to a question from Mr. Peanasky, Mr. Bell indicated the crossing can be permeable.

Mr. Boyce opened public comment.

Pat Barber of Acer Environmental, 4800 Duncans Lake Drive, Buford, Georgia, stated he will be submitting for the environmental permits and clarified how they will be mitigating the incised banks of the stream. Mr. Boyce stated if the variance is approved that is something he can work out with Mr. Bell.

Pierluca Maffey of 186 Olympic Place stated the most current survey doesn't show the line at the banks, only center line. He stated the setbacks have been calculated from the center line of the creek even though the UDO states it should be done from the banks. He presented a site plan showing the differences in the buffers if they are calculated from the banks. Mr. Maffey stated he was worried about how the extended pipe would affect upstream properties because the distance between the proposed pipe to the pipe under the street will be very short and the water will be moving very fast, which will create a wall of water in the small space. He stated the extended pipe will cut away the south bank of the stream, which is very invasive. He stated the new survey showed a discrepancy in the topography, indicating it means the area will be filled in with new dirt that must be stabilized. He presented photos of the amount of water that flows through the area during a short storm.

Phillip Hodges of 234 W Benson Street stated the City has stream buffers for a reason and requests that the regulations be followed.

Erin Murphy of 132 Mead Road stated there are stream buffers, setbacks, and tree ordinances for a reason to protect important ecosystems, property owners' privacy and lot values, and trees that benefit everyone. She stated the current plans violate all the standards. She stated the culvert has grown in size since the last application and the City must consider how proposed plans will affect the rest of the community as well as the property owner, indicating that these plans have the potential of adversely affecting a higher number of neighbors than the average application. Ms. Murphy reminded the Board the UDO requires this project to be at least as protective as what exists now. She stated the storm runoff system for a prior project located on Mead Road was grossly undersized, causing delays, extra costs, and frequent flooding, which could repeat itself if this project is approved. She stated this project now requires two variances and will likely also violate the tree ordinance.

Daniel Payne of 209 Olympic Place stated there is a 150-year-old oak tree whose roots have been undercut by the stream and will probably fall towards his house like another tree did in April 2019, causing him to pay \$10,000 to remove it. He stated the oak tree is much bigger and will do much more damage, so he wants to have it on record that should the variance be approved he will be contacting an arborist who can access it from the right-of-way to officially document its health.

Mr. Payne stated it is not acceptable that others have been penalized for taking down smaller trees when there is potentially more damage here.

Christopher Phillips of 128 5th Avenue stated his concern is that the majority of variance applications seem to deal with stormwater, so he urges the Board to prevent encroachment as much as possible. He stated that we have a stormwater plan that should be respected.

Sandra Maffey of 186 Olympic Place stated the plans are confusing because the buffers are not accurately or clearly indicated on the plans. She asked if a stream is piped do buffers not need to be shown, to which Mr. Boyce indicated that yes, piping a stream removes buffer requirements but still requires a variance for construction activities within an existing buffer. She asked if the stream buffer requires you to be at least as protective as not asking for a variance does the applicant then have to daylight another stream elsewhere, to which Mr. Boyce indicated not necessarily. Ms. Maffey expressed concern that a whole portion of a stream was going to be lost in a pipe and reiterated the importance of trees. She stated that in all meetings the neighbors have asked for an alternate parking plan or a vehicular bridge, but the property owner has never provided one.

Mr. Boyce stated the Board chose to limit the time for public comment for this application due to the number of commenters. There being no further comment, Mr. Boyce closed public comment and opened Board discussion.

In response to questions from Mr. Peanasky, Ms. Evanovich indicated a property owner must save 75% of the canopy from trees in fair or better condition, as identified by a certified arborist and then verified by the City arborist. She stated Mr. Lisbon has not asked for a variance from the tree ordinance and a plan will be developed during the permit review process.

The Board expressed concern about penalizing this property when the stream has already been impacted from development on neighboring lots, degrading its quality and altering the bed. They stated that, like many commenters, there are still things they would have liked to see, including a house with a smaller footprint, a more creative treatment of the stream crossing, and better collaboration with the neighbors.

The Board acknowledged although this is a difficult lot, similar ones have been granted stream buffer variances in the past and the owner has addressed many of the comments made during prior hearings. They stated the owner has a right to build on his property and it was hard to see how it could be done without some encroachment into the buffer.

In response to questions from Ms. Miller, Mr. Bell indicated the key difference from the original application is the pipe size, which has been increased to a 54-inch diameter. He stated a bridge is more protective but more challenging for constructability and cost, and in his time with Decatur he has seen some reconstructed in place but no new ones built. Mr. Bell indicated the ordinance provides an exemption for driveway crossings, but there are circumstances where daylighting may be a possibility, although he has not seen it applied to a single-family residential property.

In response to questions from Ms. Miller and Mr. Boyce, Mr. Bell indicated it is best for pipe lengths to be minimized as much as possible because meandering serves the ecological function of slowing down a stream.

In response to a question from Mr. Boyce, Mr. Bell indicated the dichotomy is a larger culvert may increase flooding downstream while meandering may increase flooding upstream. He stated both upstream and downstream residents have reached out to the City about this problem.

The Board expressed concern that currently there is no good solution to flooding in Decatur, but they determined this request does meet the criteria for a variance from stream buffer requirements.

Mr. Johnson stated by necessity there will be disturbance on the banks when they begin construction, to which Mr. Boyce replied that can be worked out during permitting consistent with City Standards and he hopes Mr. Lisbon will reach out to neighbors.

Mr. Maffey stated for record the stream is a state water full of wildlife and his residence was constructed prior to the enactment of the stream buffer ordinance.

Motion by Mr. Peanasky, second by Ms. Miller, the Zoning Board of Appeals unanimously approved a variance for a residence per the submitted plans with the following conditions: 1) the driveway shall be constructed with permeable materials, 2) infiltration systems shall collect the first two inches of rainwater, 3) incised stream banks shall be stabilized, and 4) construction to be substantially similar to the site plan submitted to the Board for the November 13 hearing.

IV. New Business

Elliott Augustine, property owner, has applied for a variance from setback requirements for the property located at 372 W Benson Street, Decatur, GA 30030.

Stella Osborn of 2657 Forest Avenue, Atlanta, architect and representative, presented the application. She stated they are asking for a variance from side and rear setbacks because it is a uniquely challenged property due to the lot size. She stated the property owner recently suffered a fire and wants to construct an exterior stair and fire-rated garage to store the electronic equipment that caused it. She stated the garage would replace an existing deck.

In response to a question from Ms. Quillen, Ms. Osborn indicated the residence is 3300 square feet.

In response to a question from Ms. Miller, Ms. de la Torre indicated garages do count toward floor area ratio and the property is already over. She stated it is an unusual lot carved out of the former Scottish Rite campus and surrounded by an office park.

Ms. Osborn submitted letters of support for the record.

In response to a question from Mr. Boyce, Ms. Osborn indicated they have not looked at other options for a fire-rated space within the existing residence. She stated that Mr. Augustine works from home and often has family visit, requiring separate spaces, but they could look at other possibilities.

Mr. Augustine stated he flies drones for a living and has a lot of equipment that is dangerous to charge inside the home, so he wants to keep it out. He stated the existing deck is not used, but he would be amenable to creating a smaller space.

In response to a question from Ms. Quillen, Ms. de la Torre indicated this is a noncontributing resource in the Scottish Rite local historic district because it is new construction not related to the hospital.

In response to a question from Ms. Miller, Ms. de la Torre indicated carports do not count toward floor area ratio.

Mr. Boyce opened public comment.

Kate Swett of 124 E Benson Street stated Mr. Augustine has been her neighbor for most of the 20 years she has lived in Decatur. She stated he is the type of person they want to keep in Oakhurst and without the proposed improvements are critical for his safety, well-being, and ability to work. She stated his home is basically in a parking lot and the garage will make the space look better.

Matthew Baird of 374 W Benson Street stated he has been Mr. Augustine's neighbor for 15 years and the fire was very frightening. He stated he understands it is his livelihood but lithium batteries burn extremely hot, so these safety measures are necessary.

Eric Swett of 124 E Benson Street stated this property is basically in the parking lot of the solarium with a regional detention pond on the corner, so he does not see any negative environmental impacts.

There being no further comment, Mr. Boyce closed public comment and opened Board discussion.

The Board expressed concern regarding the floor area ratio, noting that in the past they have been very strict to the point of almost never granting a variance for it. They acknowledged the need for an enclosed space for storing the equipment and discussed other options. They understood the very specific issues with this application but were concerned about setting precedent.

The Board discussed the uniqueness of the lot and how it is surrounded by a street on three sides, so they were not as concerned with precedent being set regarding setbacks.

Ms. de la Torre stated that if interior headroom is 7 feet or less the space will not count toward floor area ratio, so they could build a carport with a storage area and it would not count. The Board and applicant were amenable to this.

Motion by Mr. Peanasky, second by Ms. Miller, the Zoning Board of Appeals unanimously approved a variance for side and rear setbacks provided construction does not lead to an increase in the floor area ratio.

V. Reports and Other Business

Staff presented the proposed 2024 ZBA schedule for review.

VI. Adjourn

Motion by Ms. Miller, second by Mr. Peanasky, the Zoning Board of Appeals unanimously approved to adjourn at 9:17PM.