Zoning Board of Appeals

MINUTES

Commission Meeting Room
Decatur City Hall
509 North McDonough Street

Monday, December 9, 2019
7:30 P.M.

I. Call to Order by Board Chair.

Members in Attendance

Members in Attendance were Erik Pawloski, Chair, Seagar Swanson Vice Chair, KC Boyce, Phillip Wiedower, and Andy Rutledge.

Staff in Attendance

Staff in attendance were Mark Ethun, Building Official, Design Environment & Construction Division Building Official, and John Maximuk, Director, Design Environment & Construction Division.

The meeting was called to order at 7:30 by Board Chair Erik Pawloski, who had the board members and staff introduce themselves. He then described the procedures that would be followed in considering each variance application.

II. Approval of the Minutes.

A. Approval of the meeting minutes for the November 11, 2019 meeting. Mr. Pawloski noted that the approval of the October minutes was included in the meeting summary, but not the minutes, and requested that the section from the summary be added. Mr. Swanson requested two minor changes. Mr Boyce noted two additional minor changes.
On a motion by Mr. Wiedower, seconded by Mr. Rutledge, the Zoning Board of Appeals voted to approve the draft meeting minutes of 11.11.19 as amended via inclusion of the approval of the October minutes, with changes on the google drive, changes noted by Mr. Boyce, and written changes from Mr. Swanson. The vote was 5-0 in favor.

A. John Ruffin applicant and John and Ro Ruffin owners, have applied for a variance from impervious lot coverage requirements for the property located at 524 W. College Avenue, Decatur, GA 30030.

Mr. Ruffin appeared to present the application. Mr. Ruffin explained the use of the property and specifically the rear stairwell, noting that his contractor did not think there were any issues but that the resulting external stairwell resulted in an expansion of lot coverage in the amount of .08%.

Mr. Ruffin emphasized that there is a cistern on the site that collects excess runoff and he finds that it compensates for deficiency in lot coverage noted above.

Mr. Pawloski noted that lot coverage and impervious surface are actually two different sections in the code, and that he was before us for lot coverage. Mr. Ruffin said that he thought they were here for impervious surface. Mr. Ethun explained the difference between lot coverage and impervious cover.

Mr. Pawloski noted that about original drawings would have to have been submitted to the City that showed lot coverage compliance, and asked how the current conditions that do not comply differ from the drawings. Mr. Ruffin explained that the contractor did not provide plans to him (just to City), and the contractor used a new driveway cut to meet lot coverage. Mr. Ruffin stated that he would want to avoid taking away pavement on the site, as it would create storm water egress issues onto College Ave.

Mr. Swanson stated that when he was on site that there appeared to be more than two units on the property. Mr. Ruffin stated no, there were only one unit upstairs and another unit downstairs, both occupied by his family.

Mr. Boyce asked if there was another unit over the garage, and Mr. Ruffin stated that it was a studio, not an ADU.

Ro Ruffin appeared to describe that considerable rainfall events would typically cause erosion of red clay from the area in question, resulting in the driveway replacement several years earlier.
Chair Pawloski opened the floor for public comment. No one spoke for or against the application. Chair Pawloski closed public comment and opened board discussion.

Mr. Swanson noted that the water retention efforts made to the property were admirable, but stated that unfortunately he can’t support the variance because the UDO precludes the board from approving a variance for a situation created by the applicant, pointing out that page one of the variance application answered “yes” when asked about this issue. He went on to say that this technicality in the ordinance specifically precludes the ZBA from being able to consider approval of the request. Mr. Boyce concurred.

Mr. Pawloski concurred and added that the board has been very strict about lot coverage, noting that the time to have addressed the lot coverage issue with the applicant was when the drawings were submitted. Mr. Wiedower stated that the action was good intentioned and that he agreed with Mr. Swanson and Mr. Boyce and Mr. Pawloski. Mr. Rutledge agreed with the other members.

Mr. Pawloski asked Mr. Ruffin back to the podium and noted that it did not appear that he had the votes needed for approval at this meeting, and asked how he would like to proceed given the discussion. Mr. Rutledge noted that, if tabled, he may be able to consider changes to the plans such that a variance wouldn’t even be needed. Mr. Swanson suggested that tabling the application until he chose to return would retain his options.

Mr. Ruffin stated that he was not advised of the difference between impervious surface and lot coverage. He said he understood that, unless the issue could be switched back to impervious surface, he was stuck.

Mr. Swanson indicated that the issue for us is lot coverage. He pointed out that the property had previously exceeded allowable limits, and that he was grandfathered in for that. The fact that this project brought him further in excess of an area where the ZBA has always been exceedingly strict. He noted that the breakdown occurred when a third party submitted plans that Mr. Ruffin personally did not approve, and resolution of that issue was a matter between private parties.

Mr. Ruffin asked for clarification of what constitutes lot coverage and Mr. Maximuk provided an explanation. Mr. Pawloski stated that only enough of the lot coverage had to be removed to get him back to the grandfathered 51.6%, noting that that lot coverage should normally be no more than 40%. Mr. Ruffin decided to request tabling the application.
On a motion by Mr. Boyce, seconded by Mr. Rutledge, the Zoning Board of Appeals voted to table the application for 524 W. College Avenue until such time as the applicant wishes to return. The vote was 5-0 in favor.

B. **Erik Weston, applicant and owner, has applied for a variance from side yard setback requirements for the property located at 112 Glenn Circle, Decatur, GA 30030.**

Mr. Weston appeared to explain the application, and the need for the project and the variance associated with it resulting from the house placement as slightly skewed on the lot, resulting in an addition that followed the existing side of the house ending 3 feet from the side property instead of the existing 4.8 foot setback.

Mr. Boyce asked if the applicant had considered plans that did not require a variance, and Mr. Weston indicated that they did but none worked because of the location of existing windows.

Mr. Pawloski asked if the applicant was keeping the existing floor plan, and Mr. Weston replied affirmatively.

Chair Pawloski opened the floor for public comment. No one spoke for or against the application. Chair Pawloski closed public comment, and opened board discussion.

Mr. Pawloski noted that the applicant had proposed to extend the house along the existing building line as it is positioned on the lot. Mr. Swanson noted that the distance to the side yard property line reduces as it extends and it is an aesthetic desire. Mr. Pawloski disagreed with the point and explained noting that the applicant is building off the back at that location due to other challenges. Mr. Swanson asked if covering a bedroom window would be considered a hardship.

Mr. Wiedower pointed out that windows were egress points for bedrooms, and they could not be covered. Mr. Pawloski noted that the loss of a bedroom would construe a hardship.

Mr. Boyce indicated that he struggled with this application because it was possible to place the addition such that it did not extend further into the setback, but that would necessitate a lot of additional work with the existing structure. Mr. Boyce noted that the Board has granted variances in similar situations where an existing house was simply being extended.
Mr. Wiedower noted that the hardship of the shape of the lot (angle) makes the setback more severe every foot. Mr. Wiedower recounted his site visit and found that a hardship could be granted because of the interior layout of the existing house. Mr. Pawloski added that the proposed addition is a one story addition and would therefore be less of an impact on a neighbor than a second story addition that maintained the 4.8 foot setback.

Mr. Rutledge stated that other houses demonstrate similar issues, and the neighbor wrote in support indicating that he felt the addition would actually enhance the value of his lot. For these reasons and the shape of the lot, Mr. Rutledge supported the variance.

Mr. Wiedower commented that there are unique circumstances of this lot.

Mr. Swanson stated that he thought that the proposal could be done differently and simply moved further in, but due to the board discussion he found that there could be a life safety issue with regard to bedroom egress. He noted that the Board has been consistent in granting variances when life safety was involved. For this reason, he supported the variance.

On a motion by Mr. Wiedower, seconded by Mr. Boyce, the Zoning Board of Appeals voted to approve the variance for 112 Glenn Circle conditioned on plans limited to and conditioned by plans substantially similar to those submitted with the application. The vote was 5-0 in favor.

C. Alex and Sage Weatherby, applicants and Alex Weatherby, owner, have applied for variances from side yard setback requirements, allowance of front yard parking, and average front yard setback requirements for the property located at 840 Sycamore Drive, Decatur, GA 30030.

Natalie Martinez, architect, appeared to represent the owner. Ms. Martinez addressed the carport first, which had received a previous variance for the purposes of replacing an existing carport. Ms. Martinez explained each of the variances which are being requested as part of an overall substantial renovation. Ms. Martinez explained each of the three variances by referencing the site plan (enclosed in application), noting the site constraints created by the topography and existing retaining walls.

Mr. Pawloski asked if the carport and front porch would contain gutters, and Ms. Martinez replied that they would. Mr. Pawloski then asked why the proposed design of the carport would encroach an additional 6 inches towards the property line from the previous design that received a variance. Ms. Martinez indicated that they were moving
the columns to create more carport space while making sure that the overhang did not go over the property line, and that they were using wider columns.

Mr. Pawloski asked about the design of the renovation, and why it needed to bump out behind the carport. Ms. Martinez responded that the owners wanted a carport and a mudroom and a powder room, they wanted to retain the existing bedroom by the carport, and they wanted to leave some areas unchanged (not trying to change items in hatched area of the drawing). She stated that the bump out was the logical entry from the carport into the new addition to the rear of the house.

Mr. Boyce asked about the front porch depth and asked if the dogwood tree would be removed. Ms. Martinez confirmed the front porch depth and indicated that the dogwood tree would be removed, but that the magnolias and a hardwood would remain.

Chair Pawloski opened public comment.

Applicant Alex Weatherby appeared. He noted that he sought approval from his neighbors, is President of the neighborhood association, was concerned about impact on neighbors and received approvals from everyone who could see it. He noted that they were just trying to get their kids from the carport in to the house without having to walk around to the front and come in directly to the living room, and also that one of the reasons they sought front yard parking is because his mother-in-law’s car had been totaled on Sycamore Drive.

No one else offered further public comment, and Chair Pawloski closed public comment and opened board discussion..

Mr. Wiedower stated that he is not in favor of front yard parking unless there is a safety issue, but neighbors seem to be OK with it and there were several nearby residents that have pads in front (though Mr. Swanson pointed out that the one across the street was a day care facility). Mr. Wiedower indicated he was hesitant on the side yard setback noting that they were already one foot off the line and asking for another six inches. He went on to say that the front yard setback request seemed reasonable.

Mr. Swanson noted that in the minutes of the 2012 variance, the board clearly viewed the proposed carport as a replacement to an existing carport. However, since the replacement was not built and the ordinances have subsequently changed, this should be looked at as fresh and new request, and that in addition to the proximity issue it should be viewed as a want/need issue and he has a serious issue with that. Mr. Swanson stated he felt the same about the front yard parking – this case is not a life safety issue. Regarding the front porch issue, Mr. Swanson stated that he is uncertain
on this. When standing out there, Mr. Swanson stated that he felt like the current proposed design would not be impactful.

Mr. Boyce commented, noting appreciation for the letters of support from the neighbors. Mr. Boyce stated that he largely agrees with Mr. Wiedower and Mr. Swanson. Mr. Boyce noted that the lots on Sycamore are generally the same and that he might be convinced about the carport if it were just a replacement, but the added encroachment along with the bump out, which he would not support as a stand alone item, lent themselves to his disapproval. Mr. Boyce stated that he found that the front yard setback proposal could bring a negative impact, but is on the fence with the proposal and could be convinced.

Mr. Pawloski concurred for the most part with the other members. Mr. Pawloski reminded the board that if the carport is substantially similar to the one proposed previously and did not further encroach the property line, it could be built using the existing variance with clearance by the building department, and asked Mr. Ethun to confirm that understanding. Mr. Ethun responded that Mr. Pawloski was correct if the carport was built as a stand alone project but that if it was part of the larger project currently proposed it is not eligible because of substantial improvement status.

Mr. Pawloski noted that, even if the carport is part of the larger project, he would be inclined to approve it if it met the same setback because philosophically he would be just re-approving the previous variance. However, he was opposed to the bumpout because there was no hardship justification.

Mr. Boyce asked if the applicant could build the carport on its own without encroaching further, and then build the bump out. Mr. Ethun stated yes (a work around if done separately from the other variances), noting that the bumpout as a stand alone project would not qualify as a substantial improvement and therefore would not exceed an existing non-conforming side yard setback.

Mr. Pawloski stated that the bumpout was pushing things a bit too much for him, and that he could not support the front yard parking, as there was no hardship or life safety issue and the board has been very consistent in applying those criteria. He indicated that he did not have a problem with the front porch.

Ms. Martinez returned, noting that a nearby neighbor at 36 Sycamore had been doing a renovation with a carport, and pointed out that even the bumpout would be a substantive distance from the neighbor’s house.

Mr. Wiedower noted that, while conceding the distances pointed out by Ms. Martinez, they were still less than the 20 feet typically expected with two 10 foot side setbacks,
and that if the neighbor built all the way to their 10 foot setback in the future, the distance would be significantly less, especially with the bumpout.

Mr. Pawloski reiterated that he still failed to see the hardship justifying the bumpout.

Mr. Wiedower noted that if a mud room was desired, there were probably design changes that could incorporate one without the bumpout.

Mr. Rutledge concurred with the points made thus far, and noted that with the carport posts being expanded to six inch width six inches off the property line, it was likely that the footings might encroach on the neighbors property.

Chair Pawloski invited Ms. Martinez back to the podium, and advised her that it appeared that there was not enough support for the variances as presented. He reminded her that if the variances were denied, the applicant could not return for similar requests for a period of 12 months. Ms. Martinez requested that the board table the variance requests.

On a motion by Mr. Boyce, seconded by Mr. Rutledge, the Zoning Board of Appeals voted to table the application for variances at 840 Sycamore Dr. until such time when the applicants would like to return. The vote was 5-0 in favor.

D. Jason Spoeth, applicant, and Jason and Michelle Spoeth, owners, have applied for variances from front yard setback requirements and rear yard setback requirements for the property located at 1050 Scott Boulevard, Decatur, GA 30030.

Jason Spoeth, appeared to explain the variance request. He pointed out that he was there because of the shape of his lot, which is long and trapazoidal. He noted that his house was built in 1952, and that it was likely that expansion of Scott Boulevard added to the difficulties in size and shape.

Mr. Spieth presented letters of support from his adjoining neighbors (including a copy of the approval text on his phone from the neighbor in Florida) and a site plan to the board.

Mr. Boyce stated that he assumed that a variance was not needed for the proposed pergola structure behind the house, and Mr. Ethun confirmed that it did not.

Mr. Pawloski confirmed with Mr. Maximuk that this lot fronted on Landover, though it has a Scott address, and that it was a true corner lot that did not have two front yards. This
eliminated the need for the front yard setback identified in the staff report, leaving only
the rear yard setback variance request from the existing 30 feet to a proposed 23 feet.

Chair Pawloski opened public comment, and noting that the applicant was the only
meeting participant in the room besides members and staff, closed public comment and
opened Board discussion.

Mr. Swanson stated that, given that we’re only dealing with a rear yard setback, does
the proposed addition have to be so large, asking if the intrusion into the setback would
be lessened if the addition wasn’t as deep as it is.

Mr. Pawloski commented that Mr. Swanson’s point is valid, and noted that there might
be less intrusion if the addition were shifted closer to Scott. Mr. Swanson noted that
there were topography issues there, as demonstrated by the existence of the brick
retaining wall.

Mr. Pawloski noted that there might be possible changes lessening the intrusion by
either moving it or decreasing the footprint.

Mr. Swanson noted that, even if the applicant did either of those things, they would still
need the variance. He went on to say that he felt this was a good project, one that the
applicant was entitled to build in order to improve his property. He stated that he sees a
hardship based on the shape of the lot and that, once the threshold of supporting the
variance concept is met, the size issue becomes negligible in terms of impact on
neighbors and therefore should be discounted.

Mr. Rutledge commented that if the addition were to comply it would have be reduced
by one third in size.

Mr. Pawloski stated that he sees the setbacks as very constraining with respect to
buildable space.

Mr. Wiedower commented that it makes sense to put the mass of the expansion where
it is, as following the line of the house minimizes the impact.

Mr. Boyce agreed and noted that a more conforming proposal would not make much
difference and would present appearance and functionality concerns, so he was inclined
to support it.

Mr. Wiedower noted that, though the lot was not small, its shape presented difficult
constraints.
Mr. Swanson asked if there were lot coverage issues. Mr. Maximuk responded by noting that the project would have to meet lot coverage and impervious surface requirements, pointing out to the applicant that the proposed patio additions behind the house might create issues on those fronts.

Mr. Swanson clarified by advising the applicant that the variance approved tonight only applied to the side yard setback, and that if the installation of the patios created a situation where he exceeded allowable lot coverage or impervious surface limitations, he would not be able to continue without seeking additional variances.

Mr. Spoeth returned and acknowledged that lot coverage would have to be met. He noted that their preliminary calculations had them right at 40%, so they would have to be careful as they proceeded. He also mentioned that, in light of previous Board discussion, he wanted the Board to note that they had already brought both sides of the addition in slightly to minimize setback intrusion.

On a motion by Mr. Swanson, seconded by Mr. Wiedower, the Zoning Board of Appeals voted to approve a 23 foot rear yard setback variance at 1050 Scott Boulevard conditioned on plans limited to and conditioned by plans substantially similar to those submitted with the application. The vote was 5-0 in favor.

Before the applicant departed, Mr. Ethun advised Mr. Spoeth that the proposed pergola structure had to be free standing in order not to be considered an extension of the existing house and therefore subject to setback requirements. He specified that there needed to be at least six inches of daylight between the overhang of the house and the pergola structure. Mr. Spoeth indicated appreciation of the guidance.

IV. Other Business.

The Zoning Board of Appeals discussed three topics briefly.

Chair Pawloski distributed a revised member seat proposal which was recently provided to the City Manager, noting that they preferred to use January through December years for the terms than the alternate proposed by the Board. Mr. Maximuk advised that he felt that he and Chair Pawloski’s meeting with the City Manager on this issue was positive, and the issue was now in the City’s hands.

Mr. Maximuk acknowledged member input for the board’s revised policy on how to receive and distribute materials after meeting packets are completed.
Mr. Boyce asked staff if the applicant at 112 Glenn Circle had been contacted by phone about the meeting, as Mr. Weston had apparently been expecting a phone call and said that he was unaware of the meeting time and date until his site visit. Mr. Maximuk responded that notification takes place via an email, not a phone call, sent by staff four to five days prior to any given meeting and provided the level of detail given to applicants. Mr. Boyce offered thanks for the information, noting that he didn’t know how to reply to the applicants comments.

The Chair adjourned the meeting at 9:00PM.

Signed

\[\text{Seegar Swanson}\]

1.13.20

Seegar Swanson, Vice Chair

1.13.20

\[\text{John Maximuk, staff}\]

1.13.20