

Board of Appeals Meeting

700 Doug Davis Drive
Hapeville, GA 30354

October 22, 2020 6:00 PM

Agenda

1. Call to Order
2. Roll Call
Michael Simpson, Chairman
Grabriel Cojocarescu
Rod Mack
Larry Martin
Martha Revelo
William Slocumb
John Stalvey
3. Election of Officer
3.I. Vice Chairman
4. Approval of Minutes
4.I. Minutes of February 27, 2020
 1. MINUTES - 2-27-2020_Draft
4.II. Minutes of April 23, 2020
 1. MINUTES - 04-23-2020_Draft
5. Public Hearing
5.I. 417 Walnut Street Variance Request

Background:

Jonathan Love is requesting a variance for relief from Section 93-29-13 (Tree Preservation Trust Fund) for the property located at 417 Walnut Street, Parcel Identification Number 14-0094-0006-070-5. The property is zoned R-SF, Residential-Single Family and is subject to the zoning regulations under Section 93-29-13 of the City of Hapeville Zoning Ordinance.

Staff Comments:

Applicant Comments:

Public Comments:

Documents:

1. Application - 417 Walnut Street_Variance Request_Redacted
 2. HLP REV 6 rev
 3. Planners Report 417 Walnut BOA
6. Next Meeting Date - November 16, 2020 at 6:00 p.m.

7. Adjourn



Michael Simpson, Chairman
Jan Bolien, Vice Chairman
Gabriel Cojocarescu
Rod Mack
Larry Martin
Billy Slocumb
John Stalvey

**Board of Appeals Meeting
700 Doug Davis Drive Hapeville, GA 30354
February 27, 2020 at 6:00 PM**

MINUTES

1. Welcome and Introduction

Chairman Michael Simpson called the meeting to order at 6:00 p.m. in the City of Hapeville Municipal Annex located at 700 Doug Davis Drive, Hapeville, Georgia 30354. Members in attendance included Vice Chairman Jan Bolien, Gabriel Cojocarescu, Rod Mack, Larry Martin and John Stalvey. City Planner Michael Smith and Secretary Adrienne Senter were also present.

Board of Appeals member Billy Slocumb was unable to attend the meeting.

2. Approval of Minutes

2.I. Approval of Minutes - January 23, 2020

MOTION ITEM: Jan Bolien made a motion, Gabriel Cojocarescu seconded to approve the minutes of January 23, 2020 as submitted. Motion Carried: 5-0.

Board of Appeals member Gabriel Cojocarescu recused himself from the following item as he is the adjacent property owner.

3. Old Business

3.I. 3240 Lake Avenue

Variance Request

Background

Beatriz Arroyo is requesting to reduce the south side setback from 5' to 0.84' for Tract 1 of the proposed subdivision of 3240 Lake Avenue, Parcel Identification Number 14-0099-0003-073-7. The property is zoned R-SF, Residential Single Family, and is subject to the zoning regulations under Section 93-22.1-1 of the City of Hapeville Zoning Ordinance.

This item was tabled at the January 23, 2020 Board of Appeals meeting to allow staff time to obtain additional information regarding the existing structure.

Staff Comment:

Staff reported that the existing property is vacant with the exception of a 1,200-sf, 2-unit apartment. Currently the structure is a nonconforming use and multifamily structures are not allowed under the R-SF zoning district.

The suitability of the building for use as an accessory structure depends on the existence of a primary use, and without any existing or proposed separate primary use, there are no applicable specific restrictions from which the applicant is seeking relief. Staff does not recommend granting the variance.

Applicant Comment:

The applicant stated that the request remains the same and she would like to move forward with subdividing the lot for the construction of two new homes.

Chairman Simpson asked if the existing structure remained on would she agree to make modifications to bring it into conformity. Ms. Arroyo stated that she could modify the building but not demolish it.

Public Comment: None.

There being no further discussion, the following action was taken:

MOTION ITEM:

Jan Bolien made a motion, Larry Martin seconded to grant the variance request to reduce the side yard setback at 3240 Lake Avenue. Motion Carried: 3-1-1: John Stalvey opposed; Gabriel Cojocarescu abstained.

4. Next Meeting Date – March 26, 2020 at 6:00 p.m.

5. Adjourn

MOTION ITEM: John Stalvey made a motion, Gabriel Cojocarescu seconded to adjourn the meeting at 6:18 p.m. Motion Carried: 6-0.

Respectfully submitted by,

Michael Simpson, Chairman

Adrienne Senter, Secretary



Michael Simpson, Chairman
Jan Bolien, Vice Chairman
Gabriel Cojocarescu
Rod Mack
Larry Martin
Billy Slocumb
John Stalvey

Board of Appeals Meeting

Videoconference

URL: <https://zoom.us/j/346985747> Webinar ID: 346 985 747

April 23, 2020 6:00 PM

MINUTES

1. Call to Order

The meeting was called to order at 6:05 p.m.

2. Roll Call

Michael Simpson, Chairman
Jan Bolien, Vice Chairman
Gabriel Cojocarescu
Rod Mack
Larry Martin
William Slocumb
John Stalvey

3. Minutes of February 27, 2020

3.I. Approval of Minutes

MOTION ITEM: John Stalvey made a motion, Rod Mack seconded to table the minutes of February 27, 2020 pending revisions. Motion Carried: 6-0.

MOTION ITEM: Rod Mack made a motion, John Stalvey seconded to waive public comments. Motion Carried: 6-0.

4. New Business

4.I. 3272 North Whitney Avenue Variance Request

Background:

Mr. Alex Arias requested a variance to reduce the required minimum east rear yard setback from 25' to 14' for the property located at 3272 North Whitney Avenue, Parcel Identification Number 14-0098-0016-001-4. The property is zoned R-1, One-Family Detached and is subject to the zoning regulations under Section 93-22.1-1 of the City of Hapeville Zoning Ordinance.

Planner's Report:

The applicant has already constructed a new side porch, which provides outdoor space for a new side door and is adjacent to the property's driveway. The porch is located within the rear setback by 10.6', which requires a Variance. The primary structure without the new porch was already 9.2' within the rear setback. To the best of Staff's

knowledge, the structure likely lawfully erected in its current form more than 20 years ago, making it legal non-conforming. As such, a Variance is required for any new construction expanding the footprint of the building to take place.

Recommendation: The applicant has not demonstrated any extraordinary or exceptional conditions that would create an unnecessary hardship should the Zoning chapter be applied as written. The applicant built the porch addition without consulting with the City, and an applicant cannot create their own unnecessary hardship. As the structure is legal non-conforming, a Variance for a 15.8' rear setback would be required for any expansion of the footprint of the building, which Staff would support. However, the Variance requested is to permit construction on the property further within the setback than the structure was already sitting, lowering the setback requirement to 14'. This was done as a matter of individual preference, not of necessity. As a hardship based on the property conditions has not been established by the applicant, staff cannot support this request for a variance.

Larry Martin inquired regarding the location of the side porch as it relates to the setback and encroachment.

John Stalvey inquired regarding the ownership of the property. Mr. Arias stated he is the owner of the property.

Public Comment: None.

MOTION ITEM: Gabriel Cojocarescu made a motion, Jan Bolien seconded to approve the variance request at 3272 North Whitney Avenue as requested.

Motion Carried: 6-0.

4.II. 817 Custer Street Variance Request

Background:

Ardina T. Pierre requested a variance to reduce the minimum front yard setback from 15' to 12' for the property located at 817 Custer Street, Parcel Identification Number 14-0098-0000-020-4. The property is zoned V, Village and is subject to the zoning regulations under Section 93-22.1-1 of the City of Hapeville Zoning Ordinance.

Planner's Report:

The lot is a corner lot, and the request applies to both street-facing setbacks. The applicant is proposing to construct a new 2,557 square foot two-story single-family dwelling with a detached garage on the property. The proposed plans show the development encroaching in the setback in three places: the front porch, the north side great room, and the north side of the garage. The lot is irregularly shaped, narrowing considerably in the rear to the west.

Recommendation: The property is unusually shaped due to its location at a peculiar four-way intersection and narrows considerably near the rear. Such a shape could be considered grounds to grant a variance based on the size, shape, or topography of the lot preventing its use as permitted by zoning. However, the applicant has not exhausted all design options for a new single-family dwelling that could fit within the established setbacks, and has opted for a wider design that accommodates a master bedroom, great room, and two-car garage. Preference is not grounds for a variance alone, and staff cannot support approval of the variance request.

Jan Bolien asked if staff had any recommendations that would allow the home to fit within the setbacks. City Planner Michael Smith there are single-family dwelling designs that can fit within the required setbacks.

Michael Simpson confirmed that the plan indicated three (3) trees would be removed.

John Stalvey stated the packet included pictures of existing homes within the area and if those were intended to provide a sample design. Michael Smith stated he believed the applicant intended to provide those as sample designs.

Lynn Patterson, City Planner, stated staff has worked with the applicant and realize the lot is unusually shaped but there are some minor tweaks that can be made to meet the setback requirements.

Public Comment: None.

MOTION ITEM: Larry Martin made a motion, John Stalvey seconded to deny the variance request for 817 Custer Street. Motion Carried: 6-0.

5. Next Meeting Date – Thursday, May 28, 2020 at 6:00 PM

6. Adjourn

MOTION ITEM: John Stalvey made a motion, William Slocumb seconded to adjourn the meeting at 7:03 p.m.

Respectfully submitted by,

Michael Simpson, Chairman

Adrienne Senter, Secretary

20-BOA-10-08

**CITY OF HAPEVILLE
ECONOMIC DEVELOPMENT DEPARTMENT
VARIANCE APPLICATION**

Name of Applicant JONATHAN LOVE
Mailing Address 101 HIGHGREEN RIDGE PEACHTREE CITY 30269
Telephone _____ Mobile # _____ Email _____
Property Owner (s) JONATHAN LOVE
Mailing Address 101 HIGHGREEN RIDGE PEACHTREE CITY, GA 30269
Telephone _____ Mobile # _____
Property Address/Location: 417 WALNUT ST.
Parcel I.D. # (INFORMATION MUST BE PROVIDED): 14009400060705
Square Foot of Property 6207 Building Size _____ Zoning RSF
Present Land Use VACANT LOT
Variance Requested RELIEF FROM PENALTY REQUIREMENT
Applicable Code Section 93-29-13

I hereby make application to the City of Hapeville, Georgia for the above referenced property. I do hereby swear or affirm that the information provided here and above is true, complete and accurate, and I understand that any inaccuracies may be considered just cause for invalidation of this application and any action taken on this application. I understand that the City of Hapeville, Georgia, reserves the right to enforce any and all ordinances regardless of any action or approval on this application. I further understand that it is my/our responsibility to conform with all of City of Hapeville's Ordinances in full. I hereby acknowledge that all requirements of the City of Hapeville shall be adhered too. I can read and write the English language and/or this document has been read and explained to me and I have full and voluntarily completed this application. I understand that it is a felony to make false statements or writings to the City of Hapeville, Georgia pursuant to O.C.G.A. 16-10-20 and I may be prosecuted for a violation thereof.

[Signature]
Applicant's signature

Date: 9.23.20

Sworn to and subscribed before me

This 23rd day of September, 2020.

Sandra H. Pilgrim
Notary Public



**CITY OF HAPEVILLE
ECONOMIC DEVELOPMENT DEPARTMENT
VARIANCE APPLICATION**

WRITTEN SUMMARY

In detail, explain any extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that would qualify for a variance.

Explain how the application of the ordinance to this particular piece of property would create an unnecessary hardship.

SPP OF 43" OAK & 27" OAK MAKE LOT INACCESSIBLE. THESE
2 TREES ARE TOWARDS FRONT OF PROPERTY

Explain how these conditions are peculiar to the particular piece of property involved.

What, if any, detriment to the public good would the proposed project have if a variance was granted?

**CITY OF HAPEVILLE
ECONOMIC DEVELOPMENT DEPARTMENT
VARIANCE APPLICATION**

AUTHORIZATION OF PROPERTY OWNER

I CERTIFY THAT I AM THE OWNER OF THE PROPERTY LOCATED AT:

417 WALNUT ST.

City of Hapeville, County of Fulton, State of Georgia

WHICH IS THE SUBJECT MATTER OF THIS APPLICATION. I AUTHORIZE THE APPLICANT NAMED BELOW TO ACT AS THE APPLICANT IN THE PURSUIT OF A VARIANCE FOR THE PROPERTY.

Name of Applicant

JONATHAN LOVE

Address of Applicant

101 HIGH GREEN RIDGE, PEACHTREE CITY, GA

Telephone of Applicant

[REDACTED]



[Signature]
Signature of Owner

JONATHAN LOVE
Print Name of Owner

Personally Appeared Before Me this 23rd day of September, 2020

Sandra H. Pilgrim
Notary Public

LEGAL DESCRIPTION

417 Walnut Street
City of Hapeville, Georgia

All that tract or parcel of land lying and being in Land Lot 94 of the 14th District, City of Hapeville, Fulton County, Georgia, containing 0.142 acres, and being more particularly described as follows:

COMMENCING at the intersection of the centerlines of Walnut Street and Forrest Hill Drive; Thence westerly, along the centerline of Walnut Street, a distance of 615.92' to a point; Thence, N 00°59'23" W a distance of 19.77' to a point on the northerly right-of-way of Walnut Street, said point being the POINT OF BEGINNING;

Thence, along said right-of-way, S 89°55'55" W a distance of 49.98' to a point; Thence, N 00°34'25" W a distance of 124.56' to a point; Thence, N 88°08'06" E a distance of 49.08' to a point; Thence, S 00°59'23" E a distance of 126.12' to a point, which point is the POINT OF BEGINNING, having an area of 6,207 square feet, 0.142 acres, said parcel being that same parcel shown as Lot 2 on PB 321 PG 51, of the Fulton County records.



ARBORIST REPORT

FOR:

417 WALNUT STREET

HAPEVILLE, GA 30354

PREPARED FOR:

JOHNATHAN LOVE

PREPARED BY:

ALEX MCDONALD

CERTIFIED ARBORIST

#SO-10407A

amcdonald@fdc-llc.com

(404) 242 9985

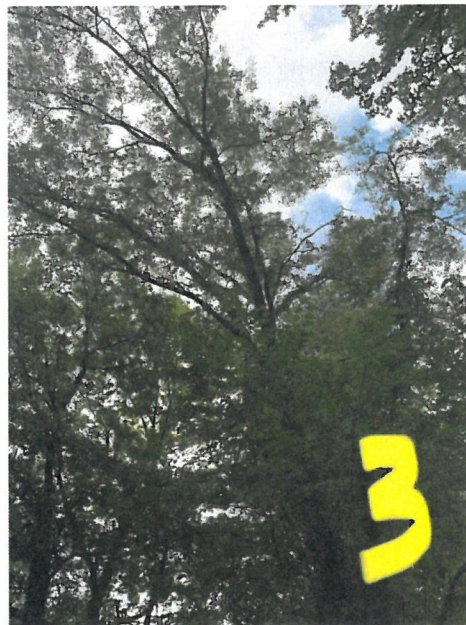
TREE #1: 7" BEECH TREE IN GOOD CONDITION. TO BE REMOVED



TREE #2: 7" BEECH TREE IN GOOD CONDITION. TO BE REMOVED

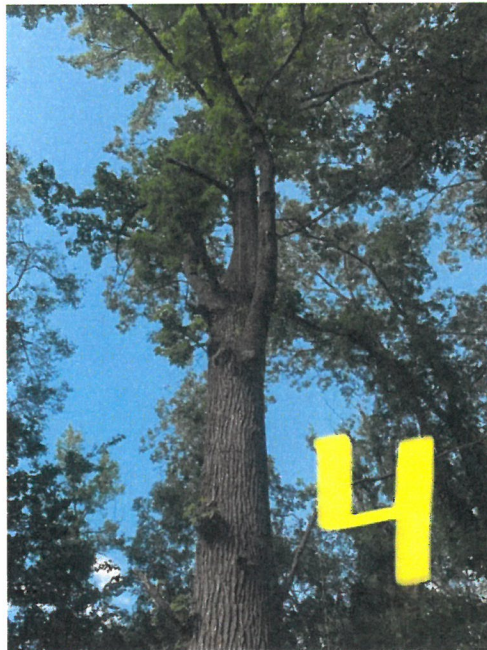


TREE #3: 19" PECAN TREE IN FAIR CONDITION. ENGLISH IVY WRAPPING AROUND TREE TRUNK ABOUT 20' HIGH, AND WILL KILL THE TREE EVENTUALLY WITHOUT REMEDIATION. TO BE REMOVED.





TREE #4: 26" SWEETGUM TREE IN GOOD CONDITION. TO BE REMOVED.

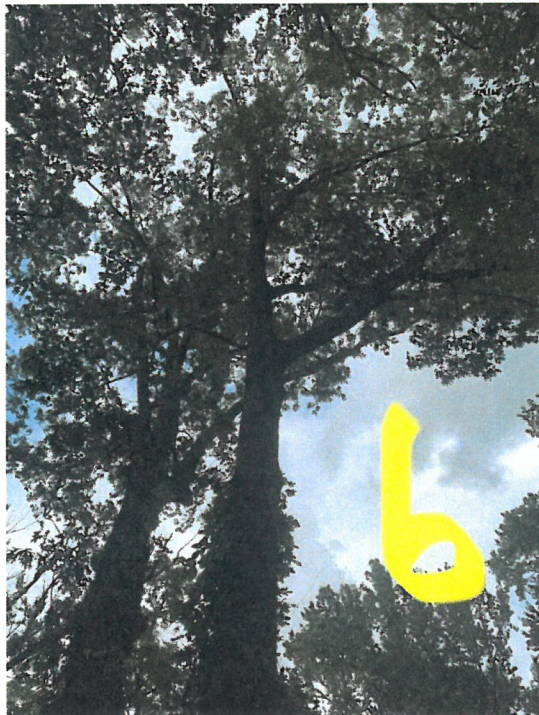


TREE #5: 31" RED OAK TREE IN POOR CONDITION. ENGLISH IVY WRAPPING AROUND TRUNK 40' – 50' HIGH. WITHOUT REMEDIATION THE TREE WILL MOST LIKELY DIE WITHIN 6 TO 9 YEARS. TO BE REMOVED.





TREE #6: 27" RED OAK TREE IN GOOD CONDITION. SMALL AMOUNT OF ENGLISH IVY STARTING TO WRAP AROUND TRUNK THAT SHOULD BE REMOVED. TREE TO REMAIN ON SITE.





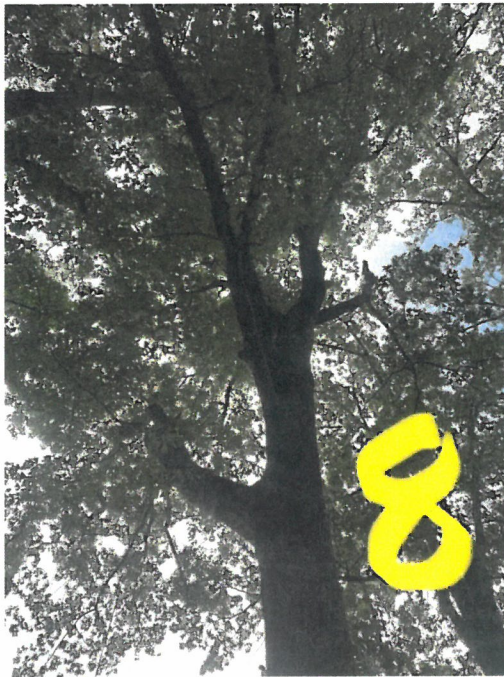
**TREE # 7: 10" ASH TREE IN GOOD CONDITION. RECOMMENDED THAT SOME
COMPETING TREES AND BRUSH AROUND BASE TO BE CLEANED UP. TREE TO
REMAIN ON SITE.**





TREE #8: 27" RED OAK IN GOOD CONDITION. TO BE REMOVED.





TREE #9: 43" RED OAK IN GOOD CONDITION. TO REMAIN ON SITE.



TREE # 10: 18" SWEETGUM TREE IN GOOD CONDITION. TO BE REMOVED



TREE # 11: 35" RED OAK IN POOR CONDITION. ENGLISH IVY WRAPPING AROUND TRUNK UP TO 30' HIGH. WILL DIE WITHIN 7-10 YEARS IF NO REMIDATION IS DONE. TO BE REMOVED



1. OWNER/BUILDER:
DANIEL LOVE
417 WALNUT ST
HAPEVILLE, GA 30354
2. 24 HOUR EMERGENCY CONTACT:
DANIEL LOVE
336-282-3606
3. ENGINEER/SURVEYOR:
FALCON DESIGN CONSULTANTS
235 CORPORATE CENTER DRIVE
STOCKBRIDGE, GA 30281
4. CONTRACTOR SHALL VERIFY ALL CONDITIONS AND DIMENSIONS BEFORE BEGINNING CONSTRUCTION. ANY DISCREPANCIES SHALL BE REPORTED TO THE PROJECT ENGINEER FOR JUSTIFICATION AND/OR CORRECTION BEFORE PROCEEDING WITH THE WORK. CONTRACTOR TO ASSUME RESPONSIBILITY FOR DISCREPANCIES WHICH ARE NOT REPORTED. ALL DIMENSIONS SHOULD BE CALCULATED OR READ.
5. BOUNDARY AND OTHER PERTINENT INFORMATION WAS TAKEN FROM: PLAT RECORDED IN PB 321 PG 51 IN FULTON COUNTY RECORDS.
6. ACCORDING TO THE F.I.R.M. OF FULTON COUNTY, PANEL NUMBER 13121C0367F, DATED 9-18-2013, THIS LOT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA.
7. BUILDER TO PROVIDE 5% SLOPE AWAY FROM HOUSE FOR DRAINAGE PURPOSES.
8. CONTRACTOR TO MAINTAIN EROSION CONTROL DAILY.
9. ANY REVISIONS THAT WERE NOT DONE UNDER THE SUPERVISION OF THE ENGINEER OF RECORD WILL VOID THE CERTIFICATION OF THIS DOCUMENT.

PROPOSED GARAGE
557 SQ. FT.
F.F.E. 964.0

DECK
180 SQ. FT.

PROPOSED HOUSE SLAB
6,207 SQ. FT.
1,178 SQ. FT.
F.F.E. 966.0

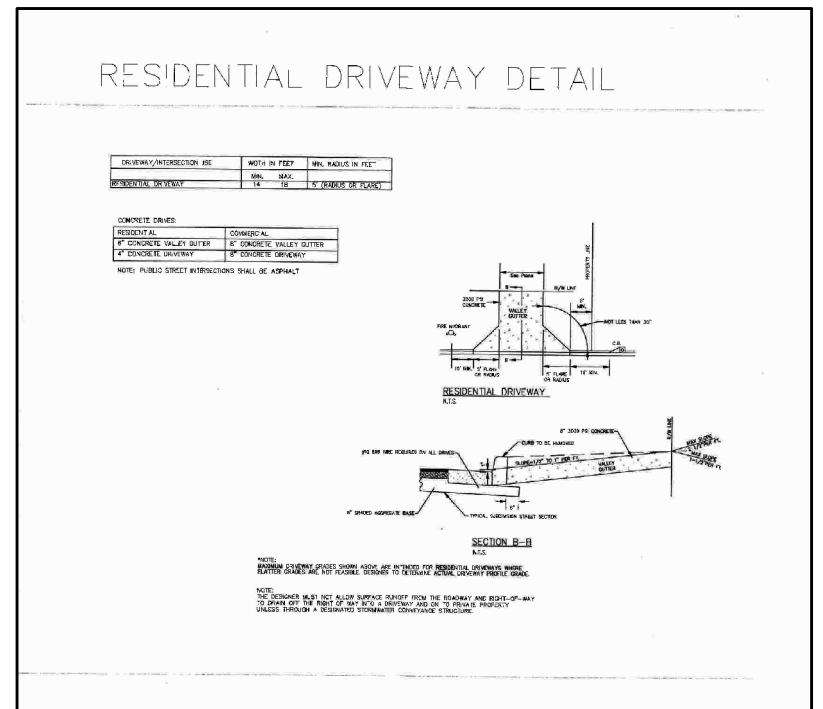
PORCH
64 SQ. FT.

A/C PAD
126.12'
(SEE NOTE)

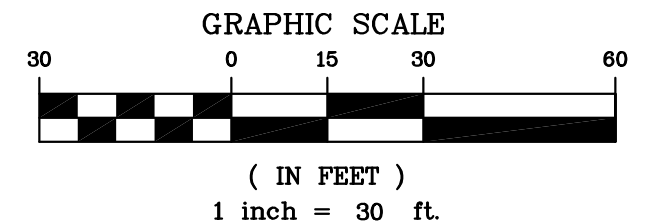
WALNUT STREET
(40' R/W)

NOTE FOR A/C PAD:
A/C PAD MUST BE SCREENED FROM VIEW FROM STREET. MATERIAL CAN INCLUDE FENCING OR LANDSCAPING.

PER FINAL PLAT



ZONING: R-SF	
SLAB SQ. FT.	1,178 SQ. FT.
GARAGE SQ. FT.	544 SQ. FT.
DRIVEWAY SQ. FT.	739 SQ. FT.
FRONT STOOP/PORCH	64 SQ. FT.
WALKWAY SQ. FT.	132 SQ. FT.
DECK SQ. FT.	150 SQ. FT.
TOTAL IMPERVIOUS SQ. FT.	2,807 SQ. FT
LOT SQ.FT	6,207 SQ.FT
TOTAL IMPERVIOUS AREA	45%



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SHEET NUMBER:	DATE:	10-16-19
	SCALE:	1" = 30'
	DRAWN BY:	WR
	REVIEWED BY:	WR
1 of 1	THIS DOCUMENT IS NOT VALID UNLESS IT BEARS THE ORIGINAL SIGNATURE OF THE REGISTRANT ACROSS THE REGISTRANT'S SEAL.	
	REVISIONS 1. REVISED PER COMMENTS 11-15-19 2. REVISED PER COMMENTS 4-23-2020 3. REV. PER COMMENTS 6-15-2020 JD 4. REV. PER COMMENTS 6-18-2020 JD 5. REV. PER COMMENTS 9-29-2020  Know what's below. Call before you dig. UTILITIES PROTECTION CENTER 1 (800) 282-7411 THROUGHOUT GEORGIA OR DIAL 811   GSWCC# 0000009371 9-29-2020	
HOUSE LOCATION PLAN FOR: 417 WALNUT STREET LOCATED IN: LAND LOT 94, 14TH DISTRICT CITY OF HAPEVILLE, FULTON COUNTY, GEORGIA		
 ENGINEERING PLANNING SURVEYING COA NO. PER 004790 235 CORP. CTR. DR., STE 200 STOCKBRIDGE, GEORGIA 30281 Ph. (770) 389-8666 - Fax (770) 389-8656 VISIT US ON OUR WEBSITE: www.fdc-llc.com		



Department of Planning & Zoning

PLANNER'S REPORT

DATE: October 14, 2020
TO: Adrienne Senter
FROM: Lynn Patterson
RE: Variance Application for 417 Walnut Street

BACKGROUND

The City of Hapeville has received a variance application from Jonathan Love to allow for relief in the recompense requirements for a 43" Oak. The applicant is developing the property for a single family home. There are two landmark trees in good condition at the front of the property (43" Oak and 31" Oak). The critical root zones of the trees cover the entirety of the property. The 31" Oak will be removed as it is in the building footprint and recompense has been accounted for in the tree conservation plan (32 inches of replacement plantings). There are an additional 9.8 inches of tree existing tree density beyond the required 14.2 inches from trees preserved on the site. The 43" Oak is slated to remain with the hope of survival, however, per the City's Tree Ordinance, recompense is required. The Ordinance thereby renders a hardship for the property owner (requirement for recompense of landmark tree to develop property in any way). A Variance is requested for relief from recompense requirement from the Tree Conservation Ordinance.

The applicant received approval for the Site Plan from the Planning Commission on October 13, 2020 and a recommendation to grant relief from the required recompense.

The property is currently zoned R-1, One-Family Detached.

CODE

ARTICLE 29. - TREE CONSERVATION

DIVISION 1. - PURPOSE, DEFINITIONS, APPLICABILITY

Sec. 93-29-1. - Purpose.

The purpose of this article is to firmly establish the value of trees to the community and to promote the health, safety, and general welfare of the public by recognizing the standards within this article. Tree canopy preservation and tree replacement will be promoted as an integral part of the land development and construction process in the city. Specific benefits to our citizens attributed to trees include:

- (1) Trees facilitate a harmonious community and help to conserve natural resources as well as provide wildlife habitats.

- (2) Trees provide a more attractive place to live and enhance the aesthetic character of the community.
- (3) Trees mitigate harmful vehicle emissions by reducing carbon dioxide levels.
- (4) Trees are recognized for their importance in the production of oxygen, shading and cooling, noise and wind reduction, prevention of soil erosion, dust filtration and fostering improved air quality.
- (5) Trees contribute to the economic value of real property.
- (6) Trees help reduce the glare of motor vehicle lights and enhance the appearance of open automobile parking areas and lands used for commercial, public/institutional, office, industrial, and residential purposes.
- (7) Trees can enhance the natural functions of streams and related buffers.

Sec. 93-29-2. - Definitions.

Landmark tree means any tree as defined within section 93-29-7.

Root plate means the area of the root zone comprised of pedestal roots, the zone of rapid taper and roots under compression, the directional radius of which based upon the tree trunk diameter at four and one half feet above the ground. The root plate will typically be represented by a concentric circle centering on the tree's trunk with a radius equal in feet to one-half times the number of inches of the trunk diameter. (Failure of the tree could result if roots in this area are damage or destroyed. Example: the root plate radius of a 20-inch diameter tree is 10 feet.)

Sec. 93-29-7. - Preservation, replacement and removal of landmark trees.

A landmark tree is any tree which qualifies for special consideration for preservation due to its size, type and condition. The following criteria are used by the city to identify landmark trees. Both the size and condition criteria must be met for a tree to qualify.

(1) Minimum size criteria:

- a. 27-inch caliper at DBH: Oak, Beech, Ash, Blackgum, Sycamore, Hickory, Maple (does not include Silver Maple), Pecan, Walnut, Magnolia (does not include Bigleaf Magnolia), Persimmon, Sourwood, Cedar, Cypress or Redwood.
- b. 30-inch caliper at DBH: Tulip Poplar, Sweet Gum, River Birch, Silver Maple or Pine.
- c. Ten-inch caliper at DBH: American Holly, Dogwood, Redbud or another genus as determined by the city arborist such as Bigleaf Magnolia.

(2) Condition criteria:

- a. Life expectancy greater than 15 years;
- b. Relatively sound and solid trunk with no extensive decay or significant structural deficiencies;
- c. No more than two major and several minor dead limbs (excluding pine for minor limbs); and

- d. A radial trunk dieback of no more than 20 percent or a canopy dieback of no more than 30 percent.
- (3) Small trees can be classified as landmark if of a rare or unusual species, of exceptional quality, or socio-historical significance. Small trees may also qualify as landmark if used in a landscape as a focal point of the design. In order to claim this credit, the applicant must submit a letter from a certified arborist stating that the tree(s) meet these qualifications pursuant to subsection (5) of this section.
- (4) An arborist report for each landmark tree that is shown to be impacted by a proposed development requiring an LDP must be submitted to the city to determine whether that tree meets the condition criteria for landmark status. The report must be prepared and signed by a certified arborist or a registered forester. The report must contain the following information: (i) site plan showing an accurate surveyed location of the tree; (ii) identification/verification of the tree's size, genus and species; (iii) description of the surrounding site conditions; (iv) detailed description of the tree's condition; and (v) digital photographs to illustrate any defects which would disqualify the tree from landmark status. The final determination of landmark tree status will be made by city staff after reviewing the report.
 - a. If a landmark tree is proposed for removal without an associated LDP either by a single-family homeowner or a business, a plan or written documentation indicating the reason for removal must be submitted to the city. The final approval for removal will be made by city staff on a case by case basis.
 - b. The removal of any landmark tree impacted by a proposed development must be mitigated by replacing the removed landmark tree with minimum four-inch caliper trees of comparable species on an inch for inch replacement basis.

Example: 32" Oak would require replanting eight four-inch caliper trees $[32 / 4 = 8]$. These recompense trees are in addition to the minimum 100 inches per acre for a particular site.
 - c. Any person who removes a landmark tree in violation of this article shall be assessed a fine pursuant to subsection (5) of this section. Regarding landmark trees removed after being designated for preservation on an approved plan, the removed tree must also be replaced on an inch-for-inch basis x 2 with tree species with potential for comparable size and quality, regardless of the 100 inches per acre requirement. If a tree is removed without approval and there is no evidence of its condition, size alone will be the determining factor for replacement. Regarding landmark trees removed on a residential lot that is not currently being developed, the fine shall be paid as referenced, however there shall be no requirement for replacement of the landmark tree.
- (5) In order to encourage the preservation of landmark trees and the incorporation of these trees into the design of new development projects, the following incentive is offered.
 - a. Preserved landmark trees with undisturbed CRZ will receive 1.5 x inches DBH $[30" \text{ oak} \times 1.5 = 45"]$.

Under no circumstance will this incentive allow the requirements of this article to be reduced administratively.

Sec. 93-29-13. - Tree preservation trust fund.

This article hereby establishes the city tree bank. The tree bank will be used exclusively to purchase, install, and maintain trees throughout the city's public areas, including parks, green spaces, right-of-way,

and government building sites and, at the direction of the community services director to improve the city's parks and/or green spaces.

- (1) Occasionally a project site does not have the capacity or will not bear the required 100 inches per acre of trees. If a property owner or developer cannot meet the minimum site density requirement for tree replacement and/or landmark tree recompense, and with planning commission approval, a mitigation fee for each tree required by this article but not planted will be paid to the tree bank. A schedule of mitigation fees is presented below:

Replacement	Mitigation fee
Non-recompense (inches per acre)	\$150.00 per inch
Non-recompense (inches per acre) outside the buildable area	\$175.00 per inch
<u>Recompense (landmark tree inches)</u>	<u>\$200.00 per inch</u>

FINDINGS

Sec. 87-3-3. - Powers and duties.

(2) Variances. To authorize, upon appeal in specific cases, those variances from the provisions of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. A variance may be granted in any individual cases of practical difficulty or unnecessary hardship only upon a finding by the board of appeals that:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

There are two landmark trees (43" Oak and 31" Oak) in good condition at the front of the property (see Sheet 1.0).

- b. The application of this chapter to this particular piece of property would create an unnecessary hardship;

*The critical root zones of the trees cover the entirety of front of the property rendering no possibility for the property to be developed without paying full recompense for the landmark trees (planting 41" of replacement trees or paying $43 * \$200 + 31 * \$200 = \$14,800$ to the Tree Bank). For a single family lot of .14 acres this is an extraordinary hardship.*

- c. Such conditions are peculiar to the particular piece of property involved; and

The location of the trees covering the entire width of the property restricting access is specific to this parcel.

- d. Relief, if granted, would not cause substantial detriment to the public good or impair the purpose and intent of this chapter.

The applicant is mitigating the loss of one of the landmark trees with plantings and is hoping the 43" Oak will survive by limiting the width of the driveway and not installing a sidewalk. Relief, if granted in this case, would not cause substantial detriment to the public good or impair the purpose and intent of this chapter.

RECOMMENDATION

Application of the Tree Conservation Ordinance in full to this property given the location of the landmark trees on the property creates an extraordinary hardship for the development of a property this size (.14 acres, single family dwelling). Recompense measures through replacement trees have been undertaken for one of the landmark trees that will be removed (31" Oak). The property owner is attempting to save the 43" Oak, however, the Code requires full recompense at \$200/inch. As the property could not be developed without invoking the recompense section of the Code for the landmark trees, Staff recommendation is to grant a variance to reduce the required recompense to 50% of the required inches or $(74" \times 50\% = 32")$.