

MINUTES

Athens Board of Zoning Appeals
September 21, 2016
12 Noon
Conference Room

4-1

ROLL CALL

MEMBERS PRESENT

Tom Hamilton
Chuck Burris
Kenny Charles
Ralph Fenton

MEMBERS ABSENT

Randy Heafner

OTHERS ATTENDING

Anthony Casteel	Sandra Russell
Gene McConkey	Paul Smith
Jim Dyer	Chris Trew
John Coker	Pam Smith
Kaimuddin K. Jatoi	
Jeff McNeely	

Approval of Minutes

1. Approval of June 15, 2016 work session minutes

The minutes of the June 15, 2016, work session were read and approved on motion by Ralph Fenton; seconded by Kenny Charles; vote – unanimous 4-0

Old Business

There was no Old Business to discuss

New Business

- Variance Request** by Kaimuddin K. Jatoi for a 15-foot side setback variance on a parcel shown as Tax Map 065F Group C Parcel 024.00 on the McMinn County Property Assessor Map Website and located at 645 Sunview Drive in an R-2 Medium Density Residential District.

Chairman Hamilton turned the meeting over to Chris Trew the City of Athens attorney.

Mr. Trew said that Mr. Jatoi was sent a letter from Community Development Department after receiving a complaint from a neighbor that the accessory building that he has on his property was placed within fifteen foot of the property line. We have a fifteen-foot side setback requirement in residential neighborhoods which is where this gentleman (Mr.

Jatoi) resides. He has filed a request for a variance such that he does not have to meet that fifteen foot side setback of the code. He (Mr. Jatoi) has submitted with his request for this variance a petition, looks like it is on pages three through seven.

Mr. Casteel made mention that he did have Mr. Jatoi's entire application if anyone wanted to look at it.

Mr. Trew said he did not know if the Board had an opportunity to review Mr. Jatoi's documents he submitted. His basis and grounds are set forth in his petition and if there is any other information he would like to submit, then it is his burden to show he is entitled to the granting of a variance so he (Mr. Trew) thinks he should put forth his case.

Chairman Hamilton swore in Mr. Jatoi. Mr. Trew said if there are other witnesses, they can be sworn in at the time.

Mr. Jatoi presented a letter from one of his neighbors. The reason why he filed the petition is because of "A", safety. He said his driveway, unlike anyone on Sunview Drive, comes off on Matlock. Matlock is a thoroughfare now. They speed down the street and his wife has to pull in and then turn in backwards to park the car. Right now, we pull straight in. Mr. Jatoi began to reference a packet of pictures he had taken around his neighborhood. He said based on the four streets where he lives, Millard, Dossett, Morgan, this is (referencing the packet) what it/the city looks like. He said he was the only one that was told to do this back in 2011 and erroneously, Mr. McConkey sends the letter out to his neighbor Mr. Baines and the second letter goes out William Strasser. In 2012 another letter was sent regarding his (Mr. Baines) carport; that carport is still standing today. He said he talked to his neighbor about a tree that was broken and told them it was going to come down in his yard and was a danger to his children. The tree fell on his property; the police came out and the neighbor said just call the insurance company and they will take care of it. When you call your insurance company, it goes against you not them. The packet contains the police report. Now, he says that he was told that he cannot use his property because of a zoning issue. They have picture and want to claim something about their property line. Mr. Jatoi showed a picture of the neighbor's fence that said "No Trespassing". He said that fence, he presumed was the neighbor's property line because beyond that, he said he has maintained it since 2005 when he moved there.

Mr. Jatoi said, (making reference to the violations he submitted with his application of other properties in violation in the vicinity of where he lives), "everyone here, all these violations, left, right, and center, have nothing to do with enforcement of the law but except for me, and I am the only Muslim here in town." Mr. Jatoi then asks, Mr. McConkey if he knew the two people besides the office complained. At this point, Mr. Jatoi is stopped from speaking by Mr. Trew.

Mr. Trew told Mr. Jatoi that this moment is a chance for him to tell his story. If he wants to call someone as a witness, they can do that, but Mr. McConkey has not been sworn in. Mr. Trew said to ask questions, it has to be done in certain order.

Mr. Jatoi said, alright. Mr. Jatoi then asked Mr. Trew if had read a letter he (Mr. Jatoi) was holding from a neighbor who lives next door. Mr. Jatoi showed a picture of a neighbor's property and said it was not being maintained and he has to look at that. He said the reason he moved his carport is to have full enjoyment of his property which over the years, their (neighbors) claim was their tree so they could not move carport. When the tree went down, he had to take care of it and now that he graveled it all up, he cannot use his property for his full enjoyment. Day in and day out, he has to deal with this stuff.

Mr. Jatoi said, his request was that he cannot use his property at its fullest extent. When you pull into his driveway, you have to slow down on Matlock. Anyone who has been on Matlock here lately knows what he is referring to. He said he pull his car straight in now and that is why is he is requesting a variance to use his property to its fullest extent and to safeguard his family.

Chairman Hamilton said, "Let me say this Mr. Jatoi, this Board is available to you to apply for a variance to the zoning code. We have nothing whatsoever to do with any other violation, the tree that fell or didn't fall, the "No Trespassing" sign, all that stuff is essentially neighbor to neighbor issues it has nothing whatsoever to do with this Board. This Board is not punitive in any manner; we can't even address really the letter your received from Mr. McConkey saying you were in violation. We don't have anything to do with that; it is not us. We are here strictly to consider the application for a variance that you have presented and as laid out it application you filled out; there are five reasons that we can give you a variance. If you meet one of those five we can give you a variance. If you don't meet one of those five, then we can't by State Law, give a variance.

Mr. Jatoi said, "Then it is also something that I want to rely on the Constitution which treats everyone in equality." Mr. Jatoi said he is not going to use his property in its full extent, and that is a constitutional taking. He said he could not use his property to the full extent that he has always been wanting to. The reason why he brought up the tree issue was because they always claimed their tree, their tree, their tree, so they could not put the carport there. When the tree came down, "Oh suddenly you deal with it because it is a monetary issue. He said he dealt with it, he took care of it, he took care of all that stuff and his hardship comes from the fact that he cannot use his property to the full extent.

Chris Trew said to Mr. Jatoi, he is trying to tell the Board he cannot use this property....(Mr. Jatoi asked a question and Mr. Trew did not finish his sentence.

Mr. Trew said it is one thing to make a conclusion, but Mr. Jatoi needs to provide facts to show that he cannot use his property to the fullest extent. Mr. Trew said, "what you're trying to tell this Board is that if your carport is pulled fifteen-foot back you are gonna have property on the other side of your carport, the garage or whatever it is, you're trying to tell this Board you can't use this property?"

Mr. Jatoi answered Mr. Trew, "For what, there's no use for it." That is why the carport is set back over there. There is no use for that land over there, it is all graveled up because once again, the tree stump that they (referring to neighbors) used to own now grows, they don't take care of it." He said he had pictures of how they (neighbors) maintain their property.

Chairman Hamilton replied, "How they maintain their property is not an issue."

Mr. Trew said, "Let me ask you this. Can you physically move your garage back in the direction from whence it came I suppose, fifteen-foot, and still put a garage there?"

Mr. Jatoi replied, "I can."

Mr. Trew said, "Next. That would create a space fifteen-foot beyond your garage."

Mr. Jatoi said, "Right"

Mr. Trew said, "How wide is your garage?"

Mr. Jatoi answered, "Twenty-six feet".

Mr. Trew continued, "So there will be a space behind your garage twenty-six feet in width and fifteen-foot to the line you say you cannot use?"

Mr. Jatoi replied, "That is correct."

Mr. Trew then said, "What does that twenty-six by fifteen-foot area look like? Is it grass?"

Mr. Jatoi said, "It is all gravel."

Mr. Trew asked, "Why is it all gravel?"

Mr. Jatoi responded, "Because I graveled it. It was easier to maintain, because I wanted to move the carport there. Because I was gonna use my property, there was no point in me putting a carport in the middle of my property."

Mr. Charles asked if he could ask a question. "Before you did this, did you come to the city and apply to move that carport or to do that."

Mr. Jatoi answered, "No, and the reason for that was as I mentioned, I drove around the corner and I see two carports on the street. Have you seen those pictures by any chance?"

Mr. Charles responded, "I understand what you are talking about. I actually spoke with Anthony about this and historically, the way those things are handled by the city because of the staffing, is when a complaint's filed, those are addressed."

Mr. Trew asked, "What is on either side of the gravel that you placed up against the line."

Mr. Jatoi said, "One side is a fence, one side is a shed."

Mr. Burris entered the conversation, "That is what I was going to ask. In this picture here (referring to a picture in the packet), is that your (referring to Mr. Jatoi) fence?"

Mr. Jatoi answered, "This one coming lengthwise is my fence. ...that is the one has the no trespass sign on it is the one on the backside."

Mr. Burris said, "So this fence here (again making reference to page in packet containing picture) is the back fence."

Mr. Jatoi said, "Ya, ya."

Mr. Burris said, "Let me ask you another question. This grassy area right here, whose is that?"

Mr. Jatoi responded, "That is mine and it is going to be gravel also."

Chairman Hamilton said, "Let me ask something. What is, excuse my crude drawing here (as he hand draws a diagram), assume that's the fence and the property line correct."

Mr. Jatoi said, "Correct."

Chairman Hamilton said, "This is the neighbor's property." (referring to the drawing)

Mr. Jatoi said, "Correct."

Chairman Hamilton asked, "What's right here?"

Mr. Jatoi said, "Grass and a tree stump and nothing maintained."

Chairman Hamilton said, "Your, part of your application, number four, "that by granting a variance to the Zoning Ordinance there will be absolutely no change in any kind of enjoyment of property benefit to the neighbor in question. In no way, shape, or form will the neighbor be inconvenienced or deprived of full unfettered and complete use of their property."

Chairman Hamilton continuing, "If you move your carport to, for instance over here (referring to property picture in packet) so that this part is now like that part, why are they not enjoying, why are they enjoying unfettered use and you (Mr. Jatoi) wouldn't be?"

Mr. Jatoi answered, "Because I am utilizing my property. They are not utilizing their property. I have moved my carport so that I can have access and fully... (Sentence cut off)"

Chairman Hamilton replied, "You're utilizing it as a lawn right now."

Mr. Burris spoke up and said, "Chairman, another question if I may, you approve, I'll have to ask Mr. McConkey a question. Does he need to be sworn in?"

Mr. Trew answered and said, "Mr. McConkey needs to be sworn in."

Chairman Hamilton swore in Mr. McConkey

Mr. Burris began speaking to Mr. Jatoi, "On page eighteen of your packet, I ask you here that this grass area, that that was yours. You told me that it would be graveled."

Mr. Jatoi answered, "It is mine. Graveled."

Mr. Burris asked, "Mr. McConkey on page eighteen, if he was to move that carport to this grass area will he be in code?"

Mr. McConkey replied, "As long as he's fifteen-feet from the fence (referring to the fence located on the property line), yes."

Mr. Trew asked, "Before you moved the garage to its present location, what was in that fifteen by twenty foot area?"

Mr. Jatoi answered, "Grass."

Chairman Hamilton asked, "Was it being used?"

Mr. Jatoi said, "Yes, sir."

Mr. Trew said, "If you pull it back fifteen foot you could put grass back there again. So it would be the same use you were making of the land before you moved your garage."

Chairman Hamilton said, "Let me ask the Board this. Are there any special circumstances or conditions to this property does not generally apply to the district? Does anybody, can anybody come up with circumstance that doesn't apply to the rest of the district?"

Mr. Trew said, "I don't see anything in here that makes this any different than anything else in the district."

Chairman Hamilton asked, "Will this variance allow use otherwise excluded from this particular district?"

Mr. Trew responded, "Will it allow a use that is excluded? It would. Yes."

Chairman Hamilton asked, "Will the strict application of the Ordinance deprive the applicant of any reasonable use of the property?"

Mr. Trew said, "No, in my opinion."

Mr. Trew said, "If I may Mr. Chairman, it appears to me, and he has said it many times, that issue is whether the strict application of the provision of this Ordinance would deprive the applicant of any reasonable use of his land. That's what he's arguing, and you've already discussed the others and I think this gentleman has already acknowledged where his carport is now, he can, he has the space, he can move it fifteen foot of the line and still go straight in. He doesn't want to, but he can do that, he's acknowledged it. He's also acknowledged before he placed his garage in this particular location, it was a lawn. If he pulls it back fifteen foot off the line, it can be restored back to the use of a lawn, so I'm again having trouble finding why he says he's being deprived of the use of his land when he can use the land in the same manner that is was used before he moved the garage."

Chairman Hamilton said, "I think the question comes, do the members of this Board consider a graveled area or a grassed area as not being used. If the members of the Board agree with you Sir that a grassy area is not being used, then seems to be we answer yes to that question and you get the variance."

Mr. Trew said, "What the City has chosen a number of years ago to say, that we're gonna have a fifteen foot setback in residential areas meaning, you can do whatever you want to with your property, you can use it in any manner you want to within that fifteen foot, except you cannot put a permanent structure. You just can't have a permanent structure within the fifteen-foot unless you show you can't use your property. The argument you're making today, is that a lawn or gravel is not the ability of someone to use their property then there's no reason to have setbacks anywhere in the City. Anybody can make their own."

Mr. Trew said, "If he is finished presenting his proof, I don't think there's any dispute. He's acknowledged that the garage is built within fifteen-foot of the line."

Mr. Jatoi said, "Right."

Mr. Trews continued, "I know, just want to make sure we got a record here, and he's presented all of his proof, I think it is time as Chairman, you ask your members if anyone wants to make a motion to either grant or deny the motion and go on."

Mr. Jatoi said, "This has to do with carport or the shed."

Chairman Hamilton said, "Any permanent structure."

Mr. Jatoi said, "Alright."

MOTION: To deny the variance based on there's nothing in this application that meets the requirement of a hardship.

MADE: Kenny Charles

SECOND: Ralph Fenton

VOTE: Unanimous 4-0

MOTION PASSED

Mr. Trew said, "As far as Mr. Jatoi's hearing, the record needs to reflect that he showed to the members of this Board various pictures, he showed something off his computer/his iPad, he had exhibits that he showed to the Board and when he left, he took those with him and we don't have those as a part of the record any longer because he chose to take those with him."

Chairman Hamilton said, "The record should also reflect some of those overhead shots that he (Chairman Hamilton) provided and he will leave those for the packet."

2. **Variance Request** by Jeff McNeely for a 10-foot side setback variance on a parcel shown as Tax Map 055 Parcel 033.00 and Tax Map 055 Parcel 034.00 on the McMinn County Property Assessor Map Website and located at 2531/2533 and 2535 Decatur Pike in a B-3 Intensive Business District.

Chairman Hamilton swore in Mr. McNeely. Chairman Hamilton said, "We are looking at a ten-foot side setback. This property is the old Tennessee Log Homes.

Mr. McNeely is the property owner. He said what they are looking at is a hotel. They met with the hotel and they've seen the location and like it. They are asking for a minimum of seventy-five rooms. We want to have a fairly large room and larger than anybody's go in Athens now, to accommodate that. We are comfortable with the seventy-five rooms they are looking for, but to get that you cannot go out, you have to go up.

Chairman Hamilton said the gentleman was on the agenda for two items one as the side setback. When you refer to the height you get into number three.

Mr. McNeely said they were somewhat intertwined, the higher they can go lessens the footprint which lessens the need for the side variance. It is a hundred and thirty-three feet wide and they need every inch of it, and if they can gain some side setback, it will make a tremendous improvement on making the whole thing work.

Chairman Hamilton asked where the side setback was that he was asking for.

Mr. McNeely said it was the side adjacent right between the Krystal and him.

Mr. Charles asked about the amount of setback reduction.

Chairman Hamilton said it was ten foot variance.

Fire Chief Dyer said he would have to make sure they have enough room to get the ladder trucks around but they are willing to work with them.

There was further discussion and a motion was made.

MOTION: A motion was made to discuss item #3 on the Agenda first.

MADE: Kenny Charles
SECOND: Chuck Burris
VOTE: Unanimous
MOTION PASSED

MOTION: To deny the variance based on there's nothing in this application that meets the requirement of a hardship.

MADE: Ralph Fenton
SECOND: Kenny Charles
VOTE: Unanimous 4-0
MOTION PASSED

3. **Variance Request** by Jeff McNeely for a 30 foot height variance on a parcel shown as Tax Map 055 Parcel 033.00 and Tax Map 055 Parcel 034.00 on the McMinn County Property Assessor Map Website and located at 2531/2533 and 2535 Decatur Pike in a B-3 Intensive Business District.

They said it is really comes down to getting four stories and the width.

There was some discussion for about a portico.

Chairman Hamilton said this request for a thirty-foot height variance to make it seventy feet.

Mr. Charles asked the Chief Dyer what the maximum was for him.

Chief Dyer said the way the code is written, we can give him how ever tall he wants as long as he meets all the sprinkler, standpipe, fire alarm requirements and life safety requirements.

MOTION: To grant the height variance.


MADE: Kenny Charles

SECOND: Chuck Burris

VOTE: Unanimous 4-0

MOTION PASSED

There was discussion on time change for the meeting and then the meeting adjourned.


Ralph Fenton, Secretary