

MINUTES OF THE MEETING

Athens Board of Zoning Appeals

October 21, 2020

9:00 AM

City Council Chambers

ROLL CALL

MEMBERS PRESENT

Chairman Tom Hamilton
John Proffitt
Wesley Kite
Kenny Charles
Dick Pelley

MEMBERS ABSENT

OTHERS ATTENDING

Anthony Casteel
Brandon Ainsworth

Approval of Minutes

Approval of the September 16, 2020 Regular Meeting minutes.

The minutes of the September 16, 2020, meeting was approved on motion by Kenny Charles; seconded by John Proffitt; vote – unanimous

Old Business

There was no old business to discuss.

New Business

1. **Variance request by Johnathan Schrock** for a five (5) foot side yard setback variance on the eastern property line, a twelve (12) foot front yard setback, and a twelve (12) foot rear yard setback on parcel shown as Tax Map 057H Group C Parcel 064.00 and addressed as 1112 East Madison Avenue zoned R-2 Medium Residential District.

Chairman Hamilton swore Mr. Schrock in.

Mr. Casteel said they have an existing stand-alone lot of record. It does not meet the minimum lot size, it is irregularly shaped, it is between two rights-of-way's, and there is no way he can get property from anyone else where he can correct the zoning problem. Basically, this lot has been created at no fault of any landowner that has ever owned it. There is no doubt that it meets the hardship requirements. He said what he tries to do is

get it as close to the norm as he can and in a normal perfect lot rectangle world, you get a 2551.5 square foot building envelope. All he is asking for is 920 square foot building envelope. The main thing is that they can get him to where he can build a marketable single-family structure home and that is what they should try to on any lot in the City.

Mr. Casteel said he took and transposed the lot measurements into GIS program and what they asked for the structure. The problem is when you fit it in there, it does not fit right when using right angles, there are curves to this lot, this property line has an arc to it. He said he probably needs more relief than he asked for. A surveyor will probably have to do it.

Chairman Hamilton asked if the ordinance called for a survey.

Mr. Casteel said no he did not think so.

Mr. Proffitt said looks like Staff's recommendation is to cut the setbacks in half.

Mr. Casteel said that legal training courses told to him over time, that if the BZA reduces the setback over half of what legislative City Council has passed, then they are basically rewriting the code and should not be able to do it. But, there are always extenuating circumstances, certain circumstances you cannot apply to any lot, and like he said before, he is sandwiched between two right-of-way's and they have to at least let him build something or he has lost the value of his property because of our regulations and the City could end up being sued and they would have to buy it.

Chairman Hamilton said it is eminent domain if they do not let him do something.

Mr. Proffitt asked if this was an existing lot that had a house on it before.

Chairman Hamilton said yes.

Mr. Proffitt asked if it was the same similar location.

Chairman Hamilton said no the house that was there, was built right on the street.

Mr. Casteel said if the planimetrics are correct, he is not asking it to be any further than what the other house was. He thinks the other house was a lot longer and it was shifted down. It was off the property line even more and made it worse once it got over there (referencing the narrow end of the lot).

Chairman Hamilton asked to see the satellite (GIS) view.

Mr. Casteel said it was probably within ten foot of the property line. He said he does not see where a survey is required.

Mr. Charles said can they make it a recommendation to approve based on Staff findings and recommendations dependent on survey for the structure to meet those requirements.

Mr. Casteel said he guesses they could.

Chairman Hamilton said the problem he sees, is they have no idea how much variance they are going to give him. Personally, he is all for the process, but they don't know exactly what the proportions are.

Mr. Casteel said what if they grant him the setbacks and require him to do the survey to see if it works, and if it doesn't work he can bring it back and we will not charge him \$135.00 and they can just act upon it again.

Mr. Kite asked if CSX or Norfolk Southern ever decided to put that line back in, what is variance with railroad company on how close the home can be built to their lines.

Mr. Casteel said in the industrial zone you can have zero setback so there is no issue about it being too close to the railroad property line. The great thing about this is it has been abandoned to the City of Athens; it is Rails to Trails now. There will not be another railroad going in there; the City owns one side and the State of Tennessee owns the other because 307 is State Road.

Mr. Kite said he was under the impression that CSX had the right to put rails back in if they deemed it necessary at any time.

Mr. Casteel said he did not know, but once again in the Industrial Zone, you can build right up to the property line.

Mr. Kite asked if this was zoned industrial.

Mr. Casteel said no it is not, but if you can do it in an Industrial Zone, he feels like you can do it anytime you need to. He said that is why he feels he should stay at least 7-feet off the property line so it becomes a functional house, he does not have to go on City property to walk around his house, he needs some sort setback back there. That is why he did not push it any further off the road when he did his analysis.

Mr. Proffitt asked Mr. Schrock if he planned to live there or sell the house.

Mr. Schrock said he is not planning to live there; most likely, he will be using it as a rental home. At this point he does not intend on selling it.

Mr. Proffitt said if he was selling, he would need a survey.

Mr. Schrock said he probably will get one.

Mr. Kite asked Mr. Schrock if when he purchased the land from the county, did they tell him the house had to be demolished.

Mr. Schrock said no they did not. He did meet with Mr. McConkey to see if it can be repaired. He said Mr. McConkey said it is probably not the best house to repair, but it can be fixed.

Mr. Kite said if there was a possibility that it needs to be demolished. With the idea of new house being built, did he check with the ordinances at that time to see if it was even possible to build a house on the lot. What he is trying to say is due diligence for buying an irregular shaped lot, does it automatically exempt the landowner from following codes and ordinances.

Mr. Schrock said he did look up the variance law a little bit. His goal was to actually fix it. It was very soon after purchasing it, he got the letter to tear it down.

Mr. Casteel said once it changed hands, they sent the letter to the new landowner.

Chairman Hamilton said so it wasn't really his option to leave the thing there.

Mr. Schrock said he would have to get the permit in 30-days.

Chairman Hamilton said they have five reasons they can grant a variance and one them being an odd shaped lot. This lot falls under that specifications. He asked Mr. Casteel if he could build a zero lot-line house in an R-2 zone.

Mr. Casteel said he could build a patio home; then he said he did know.

Mr. Proffitt said he was wondering if it could be moved further north on the lot where it is wider.

Chairman Hamilton said that is sort of what he suggested with the patio home question. If he moves up against that lot line, he has much more depth. It eliminates the side setback but comes closer to the front and back setbacks.

Mr. Casteel said it is on the edge of the patio home. It will still have to be 20 feet. The reduced it as far as they could, and they are asking for it to be 10. They could push it another 2.5 feet and make it seven. The further he gets to that side property line, the wider his building envelope is going to be on the other end.

Mr. Schrock said he drew up an alternate house plan that was 18x42, which may or may not help.

Mr. Casteel said he might be able to get it on the lot, but he did not know if he will able to sell it.

Mr. Schrock said that is why he plans to rent it.

Chairman Hamilton said it seems to him, they have to have it surveyed.

Mr. Charles said he is ready to make the motion that they grant variance based on Staff recommendations and then if the survey comes back, they can come back and adjust it if necessary.

Chairman Hamilton said without a survey, they have no idea what the variance is they are giving.

Mr. Casteel said if they are not in a big rush they could, but how long will it take him to get a survey. If the Board wants a survey, before they can make a decision, they can postpone and delay it or do what Mr. Charles is saying. They are going to have to have a survey. They can pass it based on him submitting a survey with his building permit application showing that he meets these requirements and if it does not, he needs to come back to the Board for more relief or whatever the Board feels is appropriate.

MOTION: To approve the variance based on Mr. Schrock submitting as survey with his building permit application showing all requirements are met (5-foot reduction on the side, 15 in the front, and 13 in the rear-New setbacks will be 15 front-10 side-and 7 rear).

MADE: Kenny Charles
SECOND: John Proffitt
VOTE: Unanimous
MOTION PASSED


Tom Hamilton, Chairman