

MINUTES

Athens Board of Zoning Appeals

May 19, 2021

9:00 AM

City Council Chambers

ROLL CALL

MEMBERS PRESENT

Chairman Tom Hamilton  
Wesley Kite  
John Proffitt

MEMBERS ABSENT

Dick Pelley  
Kenny Charles

OTHERS ATTENDING

Anthony Casteel  
Gene McConkey  
Melanie Long  
Stuart H. Anderson

Approval of Minutes

**Approval of the April 21, 2021 Regular Meeting minutes**

The minutes of the April 21, 2021, meeting was approved on motion by Wesley Kite; seconded by Tom Hamilton; vote – unanimous

Old Business

There was no old business to discuss.

New Business

1. **Variance request** by Stuart H. Anderson, AIA / George Armour Ewart Architect to change the side setback requirements from twenty (20) to fifteen (15) feet on a parcel shown as Tax Map 056N Group B Parcel 010.00 located at 111 Epperson Street and zoned M-1 Medical District.

Chairman Hamilton swore all those in who would be testifying. Chairman Hamilton asked who was in the medical office.

Ms. Long answered and said Athens Pediatrics.

Mr. Casteel said the existing building is sitting 15.6' off the line and the addition they are wanting to add, they are wanting to keep the line straight, keep the building in line with the existing exterior wall, so they will need to encroach at least five feet into the side setback. Staff looked at it and they understand the aesthetics and everything else, but it is a perfectly legal lot, and it does meet the minimum requirements for an M-1 lot which is 100 ft. width and 10,000 sq. feet. Currently the parcel they are showing is 100 x 150. Another issue with it is there are six of the same size lots that go along with this one on the entire parcel. They have it all the time where the property assessor puts them into one parcel for tax card purposes, but the underlying lot lines are still there, and Mr. Ewart is aware of that as well. They will have to be abandoned because it actually built across one of the property lines. They are 50-foot lots. They are going to submit an administrative plat combines the upper two lots to correct the building over the line. Staff looked the request and vetted it under what the rules say, and they concur that the office use will not change. They disagree with their reasoning behind the variances, and he will let them speak to that. They feel like the building can be built on the site without any lose to property. Staff recommends to deny the request because they could not find anything under TCA (Tennessee Code Annotated) or under theirs that will allow them to recommend approval.

Chairman Hamilton explained to them about variance. He asked if there was any reason, they could not meet the set back. He asked if there was any reason, they could not move that addition over to right five foot to meet that setback.

Mr. Ewart said if you look at the plan they submitted, and what the setback will do, pretty much every medical office depends on being able to have a corridor that you can have easy monitoring and access to the numerous exam rooms, doctor's office, procedural rooms, supplies, etc. For them to be able to add this addition to this existing building they are going to have to shut off that corridor to a certain extent at the end of the existing corridor where they also have an existing structure they are dealing with. If they have to shift it over five feet or so, it completely shuts that off and prevents a nurse from one end of the building to communicate with someone at the other end. That is so critical especially in a pediatric facility where you have to have more than one set of eyes on patients and parents sometimes. One of the other reasons is they want to provide handicap access from the back of the building. They have an existing ramp in the front, but the existing ramp is almost definitely not up to ADA standard. They want to provide handicap access from the back of the building that would provide easy access and exits.

Chairman Hamilton asked if he was saying the contour lines, he was looking at on the map were inaccurate.

Mr. Ewart said no, they are actually surveyed. If you start at the bottom right of that drawing, where the ramp is, 96, 97, 98.

Mr. Casteel said on the drawing, he did not show past that. He stopped at 95.

Mr. Ewart said there is a fair amount of slope there and they do not want to get the building going into that anymore than they have to because they want to be able to have the entrance into to the practice at the back to be as flat as possible. Some of that is also once again having the ability to monitor from one end of the building down to the other without having a blind spot in the corridor.

Mr. Proffitt said he understands what he is saying, it is really about flow.

Mr. Ewart said, flow. Yes, especially when you have children.

Mr. Proffitt asked if they were looking at adding two exam rooms.

Mr. Ewart said yes, as well as some other critical areas.

Mr. Proffitt said if they move the outside wall over, and the hall stay in the same place, they would not be able to put those exam rooms through there.

Mr. Ewart said, correct, it also cuts off that direct access, and view down the hallway and being able to monitor that new access door they need for handicap access.

Mr. Proffitt said if they kept that hallway straight, moved the wall in from the building, could they flip the exam room on the other side and make them on right instead of the left and then use that small area as some kind of storage or little lab or something.

Mr. Ewart said they really do not need little five-foot closets on that side. They need exam rooms, large supply areas also, they like to have windows in their exam rooms because it creates a better environment, especially for kids. The existing building has those kinds of spaces; as an architect, he tries to improve upon those kinds of situations.

Mr. Proffitt asked if it was still going to be pediatric medicine.

The answer was yes.

Mr. Proffitt asked what was on the other side of the hallway, a nurse's station, or break room.

Chairman Hamilton asked if under where it says "Addition" that is the "Conference Room."

Mr. Ewart said he thought it was the procedure room.

Ms. Long said, there are two office spaces there, hallway, a kitchen/conference area, storage.

Mr. Ewart said he thinks there is a bathroom there. (While looking at the drawing showing the members)

Chairman Hamilton said it is not up to them to redesign his work. They can make all manner of suggestions but that is not their job. Their job is to evaluate whether this addition as it is presented to them has the right criteria that they can issue a variance based on state law. Their question is, Does this as presented meet the criteria that's required by state law to vary this zoning ordinance. Chairman Hamilton asked Mr. Ewart if he could tell him why it meets the ordinance.

Mr. Ewart said, "He does believe the topography as sloped as it is, even though it is not a cliff, it is not conducive to having the exit out to the building where they really want to have it without really creating some useless space or space that is not ideal for the practice. One of things that is not mentioned in the TCA is, they are looking at an addition that is twenty feet deep. They felt like this was a very minor addition that doesn't worsen the situation for anybody.

Ms. Long presented a letter from Star Regional Medical Center.

Mr. Proffitt asked if there was hardship or need that overrides state law.

Mr. Kite said they talked about it being steep. In his opinion it was not. He drove by and looked at. He looked up the legal threshold for steep and it said 15 feet of rise over 100 feet of horizontal run, 15 degrees. Anything under 15 degrees is considered buildable for residential and non-residential is 25 degrees or less; so, if it is 25% grade or less is buildable in the State of Tennessee. Most municipalities in the State of Tennessee, the threshold is anything under 25% gray is considered acceptable for construction in the State of Tennessee.

Mr. Ewart said he understands that, but they have the criteria also for accessible parking, which is 2% gray area which is almost flat. They have to have a considerable area back there to provide at least two handicap spaces plus a van accessible space. That takes up a fair amount of room and they need to have a totally flat area. He talked about how hard it was as a parent to get a child out of their car and carry the car seat up the ramp at the slope of the parking lot. He said it was very difficult.

Chairman Hamilton asked what the dimension/width was of the new additions was.

Mr. Ewart said it was 36-feet.

Chairman Hamilton said eyeballing, from the contour line that intersects the door to left to the contour line that is essentially at the edge of the building. They have one foot of elevation change in twenty feet.

Mr. Ewart said yes, which is eight times which is allowable for handicap spaces of access. Two- and one-half percent what they really need.

Chairman Hamilton asked him if there was anything that would keep him from leveling that parking area.

Mr. Ewart said you can level it but then you will increase the steepness with the rest of the area.

Mr. Kite said variances are not given on ordinances to relieve ordinances to keep the applicant from doing what they want. A lot of times seeing that it does not, do any harm is not a threshold for approving a variance, just because it looks like it doesn't do any harm. He read #3 of what makes a legal threshold according to the State of Tennessee. He said their initial argument of the usability of the building. When he reads #3 it says the variance is necessary for the preservation and enjoyment of a substantial property right that is similar to that possessed by other properties in a zoning district. He asked what the Chairman or Staff's opinion was on that. Do they think it meets that threshold?

Mr. Casteel said without reviewing all the other properties, it is just an ariel outside. That was one of their arguments too, that the encroachments that are in area and his staff report, you can see from the map, there are multiple properties. There are five in there that set within the setbacks in the neighborhood. Parcel seventeen is encroaching across the property line. He said he pretty sure Star Regional is not meeting the 15-foot setback either.

Chairman Hamilton said all the buildings on Fairview and Epperson probably very much predate the zoning setbacks. He said it appears to him that they are making a choice to build their building contrary to code.

Mr. Ewart said, honestly, these buildings were built in 1974, and he does not know if there was zoning ordinance at the time that would have dictated where they could be or couldn't be. His question is the zoning ordinance that is in place right now, causes these properties to not be in compliance, and they are putting a hardship on these properties by creating a zoning ordinance that from the get-go has them in violation of the ordinance. That kind of hardship has been imposed upon the property owner because the had no choice. That is another thing to be taken into consideration here. If they were building from the ground up, he would not have any argument. This is a situation where you have building through no fault of its own was placed in the zone. For such a

small addition that does not make the matter worse, if he were in their shoes, it would be a judgment call. He said it seems to him that there are enough issues with them trying to improve this building, the neighborhood, the practice, the patience, it should trump any concerns about this in the spirit of TCA regulations or not.

Chairman Hamilton said he understood and appreciated what he said, and nothing would make the Board happier than him being able to do what he wanted to do. However, all that he (Mr. Ewart), just said, doesn't matter. TCA says there are five reasons they can give him a variance and none of them were what he just said. None of it matters to his interpretation.

Mr. Ewart said he still feels strongly about grade issue which isn't that 20% steep criteria. To him it trumped by the idea of providing a safe handicap access for patients, especially those who are leaving the practice who are not feeling well and don't feel like going to front because to steep hill and ramp.

Mr. Proffitt asked Mr. Casteel if he could go back to the Google.

Chairman Hamilton asked if their patient were parking on the bottom.

Mr. Ewart said yes around those handicap spaces. He said it is a pretty good grade to walk up to get to that ramp to get in the front door.

There was some discussion as to whether the current handicap spaces were compliant.

Mr. Ewart said Ms. Long does not own this building but is trying to purchase it.

Mr. Proffitt asked if the addition was there, the parking would have to be reconfigured because of that configuration.

There was more discussion on the handicap parking spaces and the property line.

Chairman Hamilton said if you are coming back twenty-feet; that does not look like fifty-five-feet. He asked if a lot of those trees are on this property as opposed to the other properties.

Mr. Kite said based on a lot of the arguments, they do not meet the state requirements, but he thinks the only one to him personally, that could be interpreted as falling under the criteria for a variance is the one where it states the variance can be given if it preserves the property rights substantial use similar to other buildings in that same. This is one he feels good about. Based on what the gentleman said he feels like there is something there.

Mr. Casteel said the way he reads it, they did not deprive him of use of the land. There has to be something you can't apply to anything else. It's about the property, it's not about the use.

There was some more conversation, and a motion was made.

MOTION: To deny the request.

MADE: John Proffitt

SECOND: Wesley Kite

VOTE: Unanimous 3-0

MOTION PASSED



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Kenny Charles, Secretary