

MINUTES

Athens Board of Zoning Appeals

April 20, 2022

9:00 AM

City Council Chambers

ROLL CALL

MEMBERS PRESENT

Chairperson Tom Hamilton
John Proffitt
Dick Pelley
Kenny Charles
Wesley Kite

MEMBERS ABSENT

OTHERS ATTENDING

Anthony Casteel
Gene McConkey
Brandon Ainsworth
Tim Schultz
Allan Kolb
Ryan Stoner (virtual)
Sue McQuain
Peter Giroux
Scott Caldwell
Breck Bowling
Ray Stephens
Jimmy Rhodes
Hal Abbott

Approval of Minutes

The minutes of the February 16, 2022, regular meeting was approved on motion by John Proffitt; seconded by Wesley Kite; vote – unanimous

Old Business

There was no old business to discuss.

New Business

Chairperson Hamilton swore in all those who were going to testify on each agenda item all at the same time. Items #2 and #3 were addressed at the beginning of the meeting.

1. **Stormwater Required Buffer Variance request** by Land Development Solutions to reduce required wetland buffer from 30 feet to 0 feet on property addressed as 720

Rocky Mount Road and shown as Tax Map 064D Group A Parcel 046.00 on the McMinn County Property Assessors Property Search page.

Chairperson Hamilton said this is a request for a buffer variance on the stormwater for Mr. Rhodes.

Mr. Burchfield said there were a couple things. He said to ignore the report they had from last month and reference the one they have in the packets. There are three parts to that. There is one critical component. He said that he wanted to make sure he got that to them and the buffer policy which will give them a frame of reference as to why they have the situation that they have with this development.

Mr. Burchfield said the development being proposed has a couple things from the stormwater perspective to think about, there is notice of coverage, the general stormwater activities, and then there is the A-Wrap to impact the wetland. There is no issue with impact of the wetland; that is a standard thing, TDEC reviews those and they do not have problem with it either. Where they are required by their permit with the State of TN, to manage a buffer for wetland delineation, is where they are running into issues on the project because it is such a tight parcel and they are trying to maximize the use of the property, they run into a situation where in speaking with the developer on site, was there a way they can shift some things around to get as far outside of that encroachment they see in their packets, to develop. The state says thirty feet is what they need, in which they have. They can encroach down to a minimum of fifteen feet if they average out the entire buffer to thirty feet. The way the filling pad is laid out relative to the delineation. They will give them a little flexibility with that. The engineer got the plan back to them which by large, it is virtually all the development outside that fifteen foot. There is still a problem with that, there is a spot where it doesn't meet the fifteen feet.

Mr. Burchfield asked the Board to look at the last page of the buffer policy. Within their permit, they do not have a way to authorize them to do less than fifteen feet. Legally, they cannot; they (the city) would be violating their permit if they do that. In trying to work with them if they can find a way to get that one real issue that is remaining outside the fifteen-foot minimum that is required by the State of TN, they should be fine with this. He thinks the efforts have been made to shift everything around. They don't really have any other exceptions. Truthfully, two of the other three issues can probably be eliminated entirely if they will just move over some things around, they wouldn't be in the thirty-foot. Based what he has in the report, they can get down to one single instance that is within the thirty-foot.

Mr. Bowling said that area was the fire department access and a truck access to go around the building.

Chairperson Hamilton asked Fire Chief Ainsworth if they had a plan to work out whatever fire issues they may have.

Chief Ainsworth said yes.

Mr. Bowling said the one thing he would like to add is the one area that they are inside the fifteen-foot buffer, is an area where they actually got permission from TDEC to impact the wetlands. It's not and not an area where the wetlands where the weren't impacting them. Once you move that, you have to figure out how you get a buffer back in the area you just impacted. They do not have a way to give permission for them impact the buffer zone at this point, as far as inside fifteen feet.

Mr. Burchfield said they do not. There is language in the State permit to say that if you have policy that you developed and a set of procedures, reviewed and approved, authorized under their permit review process, they can do it. The City of Athens does not have that mechanism. This certainly can be reviewed and addressed in the permit in the future. Of course, NOI is out right now with the newest one so this is probably something they will be doing in the next twelve months, but right now they do not have to means to get down to less.

Mr. Kite asked about the average and the minimum by saying, "The average cannot be below the minimum, correct."

Mr. Burchfield said the average needs to be thirty and if you look at the way the delineation, sort of has a real big cut out, and that geography is utilized to put a pond there. That whole section there is well set back from anything. The only thing that is in the buffer for the majority of the, saying longitudinally along the buffer of the wetland delineation is just stormwater ponds. There are three of them two in the corner and big one in the body of it.

Mr. Kite asked if the overall average if the overall average could be less than the minimum width of fifteen.

Mr. Burchfield said they want you to average to thirty; the minimum is fifteen.

Chairperson Hamilton said you have one section that is forty-five feet wide and one section that is fifteen and their average is thirty.

Mr. Kite asked what their average was right now.

Someone said they do not have that calculation right now.

Mr. Bowling said it was well more than thirty.

Mr. Kite asked if they averaged more than thirty what is their minimum.

Mr. Burchfield said it is about seven- and one-half feet.

Mr. Bowling said they have come back to the whole thing where they got permission to impact the very things they are trying to protect.

Mr. Kite asked if they could create a hatch on the plan like a do not disturb area or do they have another section created do not disturb area on the deed and say as of this date on this deed and move. Is that possible to create a hatch on the plan?

Mr. Bowling said they could do that, but it still does not meet that one little corner where they are already impacting. It is still close to fifteen feet.

Mr. Burchfield said the only thing he could think of was they had twenty, to twenty-four, to thirty-foot drive lanes. If they narrow the drive lanes down, they could get six feet on either side by going from thirty to twenty-four and then shift the whole body over. He said he thinks they could reconfigure that. Really, it is where the corner cuts back up that is the issue. The long run if you say parallel along the body of delineation is not a valid fifteen.

Chairperson Hamilton said their request is to vary the buffer zone and they have no vehicle with which they can do that.

Mr. Charles asked since the City had no policy in place to alleviate this, are intending to address that in the future permit with the State.

Mr. Kite asked if they could reduce the front setback by seven and one-half feet and just move the entire thing forward.

Mr. Bowling said he has plenty of property behind him, but it is all wetlands and creek so they had to move everything up and they have the drive isles that are in that a professional driver could drive, and most people would be like him, rent U-haul and it be a very bad already for him. The reason they are there is that in the past, every time he ever impacted a wetland, you are going into it, so buffer zone goes away.

There was as brief discussion.

Chairperson Hamilton said the ordinance they have is what they got, and until it is changed, is what they are going to follow.

Mr. Bowling said he has to walk out of there and have to come back in a month. He asked if they could get approval of a variance that would allow them to get down to a fifteen foot minimum.

Mr. Burchfield said he actually had that in his packet. The last paragraph of that says there is no mechanism that can give you less than fifteen feet. However, if they could shift everything around and get outside the fifteen feet on this issue, administratively, they can handle everything else.

Chairperson Hamilton asked if they meet the minimum of fifteen feet, they do not have to approve it.

Mr. Burchfield said if they get down to fifteen feet, they have it administratively there to where they can have them average it out, and it is not an issue. The only thing they can seek a variance for are those items on the tail end of that buffer policy in the packet which really are only limited to the things that are 2015 or older.

Mr. Kite asked if they could eliminate one row of storage.

Chairperson Hamilton said that was up to them and not BZA's issue.

Mr. Kite said everything in there as of right then, shows you cannot be under the fifteen-foot minimum, so if they vote to approve it, would that vote not just be on a hypothetical. Hypothetically, if they can do it, they will approve it and it may never happen, yet they voted on something that might not be possible.

Chairperson Hamilton said they are not voting on a hypothetical; they are voting on what's been presented not if they can get to something. This is what they have, and they have to approve or disapprove it.

Mr. Kite asked if any the drawings fall under their approval.

Chairperson Hamilton said no.

Mr. Kolb asked if they vote no on this and they come back with something that does meet the fifteen feet, then they do not have to come back.

Chairperson Hamilton said correct. They would only have to come if they could not get fifteen feet and could meet the requirements of the variance portion of the city's ordinance, which he could not anyway, because it is not 2015.

Mr. Kolb said TDEC does have a means that you can get within fifteen feet, they do it all the time with equivalent measures. That is one of the reasons they were there, just to

ask that question if they can. They understand the ordinance is written for them and they have to do their voting based on that ordinance.

Chairperson Hamilton said their ordinance says, "It is essential that we establish, protect, preserve, and enhance buffers where possible for the public benefit. In the event of any conflict between or within these regulations and any other state or federal regulation, the larger buffer or more stringent requirement shall apply." TDEC is going to do whatever they are going to do but if this ordinance is more strict/stringent than theirs, then this one applies based on their ordinance.

MOTION: To deny the request from thirty to zero.

MADE: John Proffitt

SECOND: Dick Pelley

VOTE: Unanimous

MOTION PASSED

- 2. Use on Review request** by WMB Construction on the behalf of Assured Storage of Athens, LLC Ryan Stoner Member for Personal Storage Units/ Mini Warehouses on a lot shown as Tax Map 047 Parcel 146.00 located at 2580 Ingleside Avenue zoned B-3 Intensive Business District.

Hal Abbott said they were doing a storage conversion to the building that used to house Cleveland State Community College.

Mr. Casteel said they are wanting to add warehouse in a B-3.

Chairperson Hamilton asked if there were any issues with it.

Mr. Casteel said no, there are warehouses in the neighborhood. They recommend of approval of use on site. He will just have to deal with the building and fire department for the changes inside the building.

MOTION: Recommend approval based on Staff recommendation.

MADE: Kenny Charles

SECOND: Dick Pelley

VOTE: Unanimous

MOTION PASSED

3. **Use on Review request** by Allan Kolb of Fulcrum Properties LLC on the behalf of Jerry H. Howell for Personal Storage Units/ Mini Warehouses on a lot shown as Tax Map 047 Parcel 0183.00 located on Mt. Verd Road (Co Rd 250) zoned R-3 Intensive High Density Residential District.

Mr. Kolb said that he has about three acres straddling the city limits. He wants to do a combination of climate control and drive-up self-storage.

Chairperson Hamilton asked Staff about their thoughts.

Mr. Casteel said he is still in conceptual stages. He does not have a site plan or interior layout of the building. Once again, he does not feel they needed that information to approve the use in the neighborhood. He said there are some red flags but as he said it is conceptual. He will still have met all the requirements in and R-3, building, parking, landscaping and meet stormwater requirements. There will be no need for a buffer because all the zoning is the same in that area. He said this use would be complimentary to residential uses. They want this close to residential development. He does not see any problem with this being approved.

Mr. Proffitt asked if the pond showing is on the property or to be built.

Mr. Kolb said it is to be built. There is nothing there now, it is a gradual slope that continues on both sides of the property.

Mr. Proffitt asked if it was going to be the detention area.

Mr. Kolb said yes.

Mr. Pelley asked where it was exactly.

Mr. Kolb said it was just west of U.S. 11.

Mr. Casteel said go out Clearwater Road and then go up the original Mt. Verd Road, it the very last parcel in the city on the left.

Mr. Kolb said it used to be an upholstery or furniture shop.

Mr. Casteel said he does not own it yet; it is still owned by Mr. Howell, but he has signed off on it.

MOTION: Move to approve.

MADE: John Proffitt

SECOND: Kenny Charles
VOTE: Unanimous
MOTION PASSED

4. **Variance request** by Sue R McQuain to change the front setback requirements from fifty (50) to twenty-five (25) feet on a parcel shown as Tax Map 047K Group B Parcel 043.00 located at 2112 Railroad Avenue and zoned I-2 Heavy Industrial District.

Mr. Casteel said it's a heavy industrial lot on Railroad Avenue. He thought it used to be a lumber yard. As you can see on the plans there are multiple easements, utility, and the adjacent railroad. There is a 100-foot easement from the center of the railway that transverses from both sides. There is also some electrical utility easement that runs perpendicular right through the lot. On previous variance requests when these easements affected property, they carried different weights. When you look at State law, it has to be something unique to this property that causes the hardship. In his report, that is the way he addressed; everyone has to deal with the railroad, but not everybody has to deal with an electrical easement running through the center of their property. In his opinion, the true hardship on this property is that strip of utility easement running north and south through the middle of the property. What he did in the report, was he took out the portion of the railroad easement because it would not apply, it is the same for everybody else. He took the front setback out and configured on the GIS and Tennessee Property Database, and then rounded the numbers up because they are not survey grade, and then transposed this and came up with how much of an area the utility easement should be. He also measured the linear footage because it was not given either. He figured it at approximately 1225 feet of linear footage along Railroad. He took that linear footage area of the easement they cannot use and averaged out along that front setback. That is how he determined the set back to be eleven feet and that was rounded up because he is not working with survey grade numbers. He would recommend denying going down to twenty-five feet based on his analysis but would recommend an eleven-foot front setback.

Mr. Charles asked if he was recommending making the setback smaller from twenty-five.

Mr. Casteel said instead of it being fifty, and they are asking for twenty-five. He is recommending denial on that, but he would recommend taking it from fifty to thirty-nine.

Chairperson Hamilton said there are at least two existing buildings that encroach on the railroad and the powerline easement.

Mr. Casteel said it might a little, but he is not sure as to when they were built. He does not know how that building got there. The other issue is the parking spaces are not

really an issue until you start covering them. If you do not cover them, they can be in the front setback just like any other parking space. Once you put that cover on them, you will have to meet the setback.

Chairperson Hamilton said the railroad is not their issue. It will play in the useful area of their property but whether a building is built in their right of way is up to them to police not the Board.

Mr. Kite asked if that changed anything for them because that is a primary factor for the variance.

Chairperson Hamilton said the variance they are asking to give is on the roadway frontage along Railroad Avenue.

Mr. Kite said their asking because of the two right of ways it is a part of it.

Mr. Caldwell said it's the shape of it. The railroad does what they want to, and it impacts like Mr. Casteel said everybody that is adjacent to it so it does limit my client to what he can do. They are asking the city for a variance for the setback so he can place some of these buildings.

Mr. Kite asked if they requested an evaluation map or railroad map because it will give exactly what the distance is and that it is in fact one hundred feet.

Mr. Caldwell said yes, the surveyor did take this off a deed.

Mr. Kite asked what kind of right of way is it. That matters too because you can build in a railroad right of way.

Mr. Giroux said his attorney had discussions with them and they are not willing to "do what you want to do in that space."

Mr. Kite asked Mr. Burchfield if he had anything to say.

Mr. Burchfield said he has dealt with numerous experiences of encroachment in the right of way, but he could not tell them what Atlanta would say today. He asked if they contacted the railroad.

Mr. Giroux said yes; they are difficult to get hold of and talk to. Their attorney has come back and said they want them to sign a lease and lease the property from them and this is property they own. He is not going to do that.

Chairperson Hamilton said it looks to him like they have wide driveways. One is thirty feet from the railroad easement, another is forty feet between two buildings, can they tighten those drives.

Mr. Caldwell said they could but the buildings for the RVs to turn, their turning radius between because they are backed in, some could pull in if they get pull through, but some of them will eventually have to back in or back out. If they provide a forty-foot space, fifty feet is really cutting it close for some of them to back out or pull in because some of those spots are close. If you look at the big blue building in the center, then you have a forty, it is really getting tight there.

Mr. Giroux said there are a lot of forty-four foot fifth wheels and to maneuver it you will need fifty-five-foot lanes, so that big blue building in the middle is designed it is adjacent to the powerline easement, it is a seventy-five-foot easement so there is plenty of room for them to back in. It is also designed as a pull through. The shorter units would come in through the other side and the longer units would come in off the powerline easement. They looked at this long and hard and with the issues of the railroad, they have two buildings that have encroached on the railroad easement, but they have been there at least since 1980. They have a building that encroached on the road setback that has been there since 1949 or 1950. In order to make the project work and this to continue to be viable they need something, or it doesn't work. The property is eaten up with easements and setback requirements.

Chairperson Hamilton asked if Mr. Burchfield looked at the entrance.

Mr. Burchfield said he does not have a specific number on the separation for the driveway from the intersection of Haines Road and Railroad Avenue. They will need to be able to maintain thirty miles and hour through there so about 225 foot clear.

MOTION: A motion was made to reduce the fifty-foot front setback variance by eleven-foot creating a 39-foot setback along the railroad avenue right of way based on Staff recommendation.

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


John Proffitt, Secretary