

**MINUTES OF THE MEETING**

Athens Board of Zoning Appeals

June 15, 2022

9:00 AM

City Council Chambers

**ROLL CALL**

**MEMBERS PRESENT**

Chairperson Tom Hamilton  
John Proffitt  
Dick Pelley  
Wesley Kite

**MEMBERS ABSENT**

Kenny Charles

**OTHERS ATTENDING**

Anthony Casteel  
Gene McConkey  
Brandon Ainsworth  
Tim Schultz  
Drew Botkin  
Charlene Such  
Matt Brazille

**Approval of Minutes**

The minutes of the April 20, 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**

1. **Variance request** by Matt Brazille, P.E. for AVE Athens, LLC to change the north side setback requirements for a retaining wall exceeding four (4) feet in height from twenty (20) feet to eleven and one-half feet (11.5) feet on a parcel shown as Tax Map 056 Parcel 080.00 located at 1102 Congress Parkway South and zoned B-3 Intensive Business District.

Chairperson Hamilton swore in those in attendance.

Mr. Casteel said this a request for a side setback variance on the north property line for a retaining wall. It does have constraints on the site. The way they approached this was, even though there were some constraints, the lot is at least 2-acres, so even though it is sort of triangular in shape, it doesn't really cause that much of a hardship when it comes to it. Also, the pipeline in the back, that's really the main thing because it cuts through the back end of the property. It basically creates two parcels. Staff recommended to grant them some relief, to allow then to install this retaining wall. It will be a curved wall; it will not be a 90-degree angle that goes in there. The engineer gave them an exact measurement and said it was going to be 7 ½ feet encroachment, so staff recommend granting them another foot because when you get into construction, sometimes things go wrong. What they are recommending is an 8 ½ foot reduction in the side setback for a retaining wall only, no combustible structures.

Chairperson Hamilton asked Chief Ainsworth what the fire department standpoint was.

Deputy Fire-Chief Schultz said he has not had a chance to look at it, but Chief Ainsworth should be familiar with it. Just looking at there, he did not think it will propose a problem.

Chairperson Hamilton asked what type of building it was going to be. Asked if he saw somewhere, it is a gym not a wooden structure.

Mr. Brazille said it was a workout facility.

Mr. Proffitt checked to see if he heard staff correctly about the recommendation being for the retaining wall, but no structure.

Mr. Casteel said yes. That is what they requested and what they are asking the Board to approve. They requested a variance for the retaining wall so they are granting them what they requested, and they are also protecting for future development down the road, that they do not end up with a structure 8 ½ foot off that line and it could become a fire hazard.

Dr. Pelley asked where they were located on Congress Parkway.

Chairperson Hamilton said it is beside the Dairy Barn.

Mr. Brazille said there is a 10-foot-tall slope (closer to Congress Parkway than where the gas pipeline runs through) and that causes the need for a retaining wall. In order to grade on the front of the property to match Congress Parkway and have reasonable slopes across the parking lot that hill has to cut down to support the development and because where the gas pipeline is, there is not enough room between the proposed building and the parking areas with setback requirements for the front lot line to cut

back down and fill it in behind the building without impacting the gas pipeline easement. So essentially, the retaining wall is there to keep them from providing any sort of impact from a structural standpoint to the existing pipeline.

Mr. Brazille said they are trying to keep the height of the wall as short as possible so there is some grading that is going to occur behind the wall. Basically, there perimeters were to go up to the easement for the gas pipeline, keep that wall as short as possible. Where the wall narrows in the back, the wall has to extend around the corner of the building and that is where they are getting the impact in the side setback.

Chairperson Hamilton asked if the building was going to be further back from the road than the Dairy Barn.

Mr. Brazille said yes. The parking lot is in the front and there is a fifty-foot front yard setback, and the building sits behind that. The back two corners of the building are basically set on the corner of the side setback corner lines. On the left corner of their parking lot closest to the building, that box sits on the Dairy Barn property is the dumpster included in the Dairy Barn. (He pointed it out on the monitor screen).

Chairperson Hamilton said it is on the backside of their parking lot.

Mr. Brazille said yes.

Chairperson Hamilton asked if Dairy Barn had a retaining wall.

Mr. Casteel said they do in the back. He asked Mr. McConkey about the height.

Mr. Proffitt asked if the cutout of trees in the back corner was the easement for the pipeline.

Mr. Casteel said yes. There is a 30-foot rear setback but when you take in that area and the pipeline, it is a sizeable chunk of the property.

Chairperson Hamilton said one thing he was interested in was the shape of the Dairy Barn lot and subject property. There are reasons they can grant a variance and one of them is an A-typical property shape. He thinks this qualifies.

MOTION: To approve the request.

MADE: Dick Pelley

SECOND: John Proffitt

VOTE: Unanimous

MOTION PASSED

2. **Determination request** by Charlene Such whether the administrative decision to deny a dog sitting, boarding, walking business as a home occupation is in compliance with the restrictions of 4.06 of the City of Athens Zoning Ordinance in the R-2 Medium Density Residential Zoning District.

Chairperson Hamilton swore Mrs. Such in.

Mr. Casteel said this is an appeal to the Board on his administrative decision not to grant a home occupation for a dog walking, boarding business in an R-2 (Medium Density Residential) District. This came about from a complaint on the other end of town about a dog constantly barking in a residential neighborhood. This person was advertising this on Rover.com. He went there to research the website and located a couple other people in Athens that were doing the same thing. They sent all of them letters stating this was not allowed in the Residential District. Mrs. Such was one of those on the website. He said he tries to be as business friendly as he can, trying to allow any business that he can. He hates that she got caught up in this because she has not had any complaints but the only thing that matters is what the code says and what they can allow. He told her she had to come off the site and she did what was asked of her. She is in compliance now. She is asking the Board to look at his decision and see if it is correct or needs reversing. When he looked at this, he based his decision on at that time is Section 4.06 says, any home occupation has to take place entirely inside the residence. When she walks the dogs, it is not inside the residence. Based upon further research they do not allow this as a Permitted Use by right at all inside the City including in an Industrial District. It is all Use on Review; they all come to the Board of Zoning Appeals for approval. That is this Boards decision to grant this us and should never be approved as a home occupation administratively.

Mrs. Such said on Rover you can select on the app small, medium, or large. She selected small dogs only and one dog at a time. Occasionally she watches a dog, and it is a Pomeranian around nine pounds. She said she thinks the code says it cannot take up more than 25% of your home. Her dogs do go outside to use the bathroom, but they are usually inside. She has never had any complaints about parking. She has no kennels outside or anything that looks like a kennel facility. Personally, she does not see a problem with that, but she is willing to abide by it.

Chairperson Hamilton said personally he does not see a problem with it either, except their ordinance cannot be specific enough to say, "except one specific Pomeranian."

Dr. Pelley asked where it was located at.

Mr. Casteel said Davis Place Subdivision, Shadows Lawn Drive.

Chairperson Hamilton said they have two situations here. One an administrative decision and two, a Use on Review. What that means is they have ordinances that specifically allow certain uses and specifically don't allow certain uses and then they have a middle ground.

Mrs. Such asked what constitutes a business in the City of Athens.

Mr. Proffitt anywhere is a business if you are providing a good or service and you are being paid for it.

Mrs. Such said and it doesn't matter how much you are making.

Mr. Casteel said he spoke with Mike Keith (COA Finance Director) and there is a stipulation on that. You have to at least earn \$3000.00 a year to legally have a business license, but it still does not change the definition that she is still providing a service. If she was doing this and did not advertise on rover.com, they would have never known. She cannot advertise it.

Chairperson Hamilton said that is fine line there.

Mr. Casteel said he was not saying she should do that; he was just saying there are people in the city running businesses and that my department does not have a clue they exist.

Mrs. Such said she knows there are people running business, but she is not going to throw them under the bus.

Mr. Kite asked Mrs. Such if she was babysitting a Pomeranian for someone. Is she running a business?

Mrs. Such said she is just babysitting a dog, but she does get paid.

Mr. Kite asked her if she thought she was running a business at home, advertising on websites drawing business.

Mrs. Such said the only website she has used is Rover and she shut that option off. She can shut that option off where she would only go to other people's houses. Even since then she has had word of mouth people call her and she is not advertising. Is she able to watch a dog if it is not through the Rover app. Is she able to babysit a dog if it not through the rover app, she is not advertising but a friend asked her as a favor if she would dog sit?

Dr. Pelley said to him as long as she goes to their house and sit the dog in their house it ok. To him a business if you are providing a service and getting paid for it, but it doesn't interfere with the neighbors, if she wants to have three or four dogs at her house, she takes them outside to walk them then yes, she is in violation of the regulations.

Mrs. Such asked if she was in violation if she walked three dogs.

Dr. Pelley said if she has them in her house and then walks them around.

Mrs. Such said as a business or as an individual.

Dr. Pelley said as a business.

Mrs. Such said she never has more than one at a time.

Dr. Pelley asked if she has to walk him/her.

Mrs. Such said it depends on the dog. The Pomeranian will not walk on a leash but yes, she does walk him.

Chairperson Hamilton said they cannot get as specific as this one Pomeranian.

Mrs. Such says since she started doing it, she has had this dog several times. She has had a couple of other dogs.

Chairperson Hamilton asked how old the Pomeranian was.

Mrs. Such said two.

Chairperson Hamilton said if this is a two-year-old kid and she is babysitting it, is it against the ordinance.

Mr. Casteel said if she is advertising it as a daycare then yes.

Mrs. Such said she thought by Tennessee state law, you can babysit up to five kids without a license.

Chairperson Hamilton said by Tennessee state law yes, by home occupation, no. That is two different things.

Mr. Proffitt asked her if she backed up to a property that is B-1 (Local Business District).

Mrs. Such said yes, it is commercial.

Mr. Proffitt said is she had an agreement with the owner or lease that property they would have to have a use on review for her to be able to do that.

Mrs. Such said she could open a dog kennel there. She said she tried to buy from Sky Haren but he wants \$75K for it.

Mr. Casteel added to Mr. Proffitt's comment by saying outdoor runs are not permitted in the B-1 District, when you store dogs outside.

Mrs. Such asked if you had to be outside the city to do it.

Mr. Casteel said the only place they allow outdoor runs is in the B-3 (Intensive Business District) and in Industrial Districts.

Mrs. Such asked if the B-3 District was in the county.

Mr. Casteel said it is the Intensive Business District; it's everything along Congress Parkway and Decatur Pike. That is their most intensive commercial district.

Mr. Proffitt said that might be a possibility, not saying the Board would approve it but it is not residential zone. In a residential zone, it is tough to get a Use on Review for this.

Chairperson said what she could do is not their business; what she is doing is their business. He agrees and understands what they are saying, but that is not the situation. Their situation is they have a questionable home occupation there. Like he said, if this were a child instead of a dog, they would not have an issue.

Mrs. Such agreed.

Mr. Casteel agreed. It is the same thing on all their home occupations, when he grants one, he tells them what will be allowable. He said they work on a complaint basis and if they never get any complaints, he assumes everything is OK. If he gets complaints, he will have to revoke the approval

Mr. Proffitt said you have to apply this equally to everyone, you cannot just apply here or there.

Mr. Casteel said he did not get any pleasure just pulling her out of thin air. He did not have any choice.

Chairperson Hamilton asked if there were three advertised.

Mr. Casteel said yes, it was actually the lady on Pinecrest.

Chairperson Hamilton asked if she advertised also.

Mr. Casteel said she was the one that had the dog. It was not even a client from Rover.com, she was babysitting for a friend and neighbor said it barked all weekend long. The police department came out there; they called animal control. The police department let him know and they started investigating it.

Mrs. Such said if she gets written statements from her neighbors saying that they do not mind her watching one dog at a time occasionally, would the Board approve that.

Mr. Kite said what if they move or someone else moves in.

Mrs. Such said that was a good question.

MOTION:     To deny the home occupation.  
MADE:        Dick Pelley  
SECOND:       John Proffitt  
VOTE:         Unanimous  
MOTION PASSED

The meeting was adjourned.

  
John Proffitt, Secretary