

MINUTES OF THE MEETING

Athens Board of Zoning Appeals

December 15, 2021

9:00 AM

City Council Chambers

ROLL CALL

MEMBERS PRESENT

Chairperson Tom Hamilton
Wesley Kite
John Proffitt
Dick Pelley

MEMBERS ABSENT

Kenny Charles

OTHERS ATTENDING

Anthony Casteel
Gene McConkey
Brandon Ainsworth
Tim Schultz
Ben Burchfield
Jeremy Cansler
Scott Caldwell
Tony Campbell

Approval of Minutes

Approval of the October 20, 2021 Regular Meeting minutes

The minutes of the October 20, 2021, regular meeting were approved on motion by John Proffitt; seconded by Dick Pelley; vote – unanimous

Chairman Hamilton made mention that the people that were there did not match the discussion. There was some discussion as to whether it was Mr. Davis or Mr. Dunlap.

Old Business

There was no Old Business to discuss

New Business

1. **Variance request** by Jeremy Cansler for the elimination of the required central located recreational area in the R-4 Mobile Home Park District. The property is located at 1019 South Jackson Steet on parcels shown as Tax Map 066J Group A Parcel 003.00, 002.00 and 012.00, all parcels total 7.3-acre.

Mr. Casteel said they are requesting to waive the requirement for the recreation area in the R-4 (Mobile Home District). Based on the flood zone and the shape of the property, Staff does concur that there is floodway on the site and there is an irregular shape to it but still does not cause the petitioner not to be able to have a reasonable use of his property, so Staff recommends denial of the request.

Mr. Caldwell said when he first started looking at this site, the topo, if you look there are actually eight sites as soon as you pull into the mobile home park. There is like a 20-ft elevation change. The site has a lot of variation in topo and like Mr. Casteel said, an irregular shape. Not being able to use some of the 7.3 acres of the site it does limit the sites that can be placed on the actual existing property because, you wouldn't want to move the existing because they are there. It could be changed some, but you're talking 24 sites that might have to be moved. By asking for a variance for to forgo the recreational space, is because the people could utilize Heritage Park which is the adjacent property. Not saying they would but taking away from the developer, it would be over three sides he could actually place on his property. They are asking a variance because there is a flood plain, the topography if you will look along the creek, you really cannot do a whole lot with that because of the grade change. The front porch, when you pull into the mobile home park to the left, you really cannot put anything there because of the floodplain. You cannot put anything there. As soon as you come into the park there is a place to the northeast, you might be able to place two or three units back there. If they can forgo the recreational space, the 500 square feet per unit, it's like 18,000 square feet, the whole site, close to half an acre. They could improve the site and place a couple more units. That is why they are asking for a variance for the recreational space.

Chairperson Hamilton said he sees proposed recreational areas on there.

Mr. Caldwell said that was one of the initial site plans that they submitted and then they submitted a different site plan. You can put recreational space on there then you would limit the units that you could put on this property. That is why they are asking a variance, according to shape of this property, the topo, and the floodway it does limit what he can do. If they can put the space on that drawing and the site was a little different, they could maybe put another three somewhere else, but they cannot because the way the land is.

Chairperson Hamilton asked if the site plan he was holding not the current proposal.

Mr. Caldwell said no and gave him the correct one. He said it does not really change a whole lot, it just takes the recreational space off.

Mr. Proffitt said he is looking at the before and after and he is taking these two points, it looks like it adds two spaces.

Mr. Caldwell said when he received these surveys, one of the lots had “proposed” on one of them and one was existing. He looked at it as he could utilize it, but he could not, so he had to correct it. There is an existing there, so they are only adding eight there.

Mr. Proffitt said if he uses this power line as his corner, it talks about adding three spaces, but it looks like it would only add two.

Mr. Caldwell there’d been two spaces there, but one of them is existing so the green space would’ve only been right there (showing on the map) a portion of it.

Mr. Proffitt asked if it was actually taking away space.

Mr. Caldwell said yes, it would be taken away and the green space there (showing the map), they would not be able to place it. He said the drawing is wrong because the existing is proposed.

Mr. Proffitt said it still looks like there are just two lots there.

Mr. Caldwell said it is two lots, but one of them is existing. He had the drawing wrong.

Mr. Proffitt said it would actually impact two potential spots.

Mr. Caldwell said yes.

Chairperson Hamilton said this shows existing.

Mr. Proffitt said one is existing and one is proposed. If you take that and pull those two out, that is the space. He said he thinks it affects two lots.

Dr. Pelley asked what was being said.

Chairperson Hamilton said the discussion was about whether they were taking one space of two spaces by eliminating the recreational space.

Mr. Casteel showed the original map that was part of the packet.

Mr. Caldwell said in the site he had the recreational space on there. You can provide on the site but at the same time, according to the variance, if there is something wrong with the site, whether it be shape, topography, floodplain, so the site does have all three of those. They are asking a variance and yes you can provide recreational space, but it takes away from actual size that you can develop.

Chairperson Hamilton said unfortunately, by State law, financial implications of this variance cannot be a factor. They cannot approve a variance just so they can put another unit in there.

Mr. Casteel said it cannot be the sole reason for doing it.

Mr. Kite read some things from the Tennessee Statute website.

Statute C says, "a failure to show or make an effort to mitigate the hardship shows the board that the need for a variance has been self-created. The applicant must make an effort to eliminate the hardship before applying. If no effort, then the need for the variance has been self-created."

Mr. Kite said the drawing submitted shows that they made an effort to eliminate the hardship or difficulty. This shows that they were in fact able to eliminate the hardship.

Mr. Campbell said that drawing there is already a trailer there. When submitting that, Mr. Caldwell did not know there was a trailer there. If you do that, the trailer has to be completely removed.

Mr. Kite said the lot to the west.

Mr. Campbell said there is a trailer there.

Mr. Kite said that Mr. Campbell just said that he drew it up to show he could add the green space.

Mr. Caldwell said his mistake, he did not have the right survey, this lot here existed, so when he put the recreational space right here, that is approximately 10,000 square feet, in theory, they will only be able to utilize 5,000.

Mr. Kite asked if all the other trailers were already there.

Mr. Caldwell said yes.

Mr. Kite said the ones that are darker on there, the eight are proposed and these three, so the green space could go on any of these empty lots.

Mr. Caldwell said yes, it could go in any of the whole area, but you will have to take away from the proposed development or move trailers around on the side.

Mr. Kite then read Statute B.

"A hardship must be considered unique to that parcel and that parcel alone; not something that is a characteristic of parcels in that area or district. It says it must

be exceptional or unique to that property and prevalent to any other property in the area. If all the properties in vicinity suffer the same disability, then a variance is not appropriate. If the variance is granted to only one of the affected property owners, then she or he has obtained special privilege to use their property in a way that no one else can."

Mr. Kite said the creek and topography he thinks would be a characteristic of that area of every property owner that owns property on that creek.

Mr. Kite continued on to read Statute G.

"The variance cannot compromise the function, operation, or activities or facilities in the development."

Mr. Kite said in his opinion, deviations are supposed to be as minimal as possible from the code requirements. He said he feels like this is so far from the ordinance and that is being an amendment itself and they do no do amendments. They would basically be saying if you live next to "X", therefore, you do not have to follow "Y." What they are asking is because they live next to this park (based on an assumption that this park is going to always be there), because what is the next parcel across the creek, they do not have to follow X, Y, Z. In his opinion it is really an amendment.

Chairperson Hamilton said he does not disagree. He has a little problem with sanctioning the use of the park as substitute for them being required to develop some sort of recreational area simply because it is sitting there. They are not suggesting the tenants cannot use the park, but the park is for everyone.

Mr. Kite said when they were talking about moving the trailers, he would like to read Tennessee State Statute D.

"More cost to the owner to develop the property consistent with zoning is not a legal basis to grant a variance."

Chairperson Hamilton said that is what he was saying earlier, they cannot give a variance just because it economically advantageous to them.

Mr. Proffitt referenced the map where they could use the space as a recreational area.

Mr. Caldwell said they are not basing this on economic, but just looking at the site, if the site didn't have irregular shape, the flood plain, and topography it would be easier to provide. He does not think looking at this property, are all these properties along the creek the same yes, but there are other properties that are adjacent to the creek, and those properties are different to some degree. It's not like the same situation. Every property along the creek/branch or whatever, they are adjacent to floodway more than

likely if it has been mapped. There are some floodways that have been mapped but he does agree with what he said and does not disagree.

Mr. Kite talked about one of the examples for waterways given in the Tennessee Statute. If it was going through the middle of the property, or diagonally through the property, this creek does not go through the property. When it talks about except shape or size, exceptional narrowness would be if the lot was so narrow, you could not get the minimum requirements, whatever those minimums are for what you are doing. This is not considered exceptional narrowness because everything that they are trying to put on there technically fits in the 7.3 acres. If this lot was so narrow like a flagpole lot, then he would agree and say yes, it's so narrow, you can't even get the minimum requirements.

Chairperson Hamilton said he had an issue with their topography argument. If he understands what they are saying, they are saying the topography is not so steep that they cannot put a trailer on it, but too steep to put a playground. He asked if that was what he was hearing.

Mr. Caldwell said he was just saying where he proposed, it was a mistake on his part because it could not be both lots because one existing unless you take it away.

Chairperson Hamilton said he did not have to take it away; he could put six lots instead of eight.

Mr. Caldwell said right, that is what he was going to say, so the lots would be minimized to say six (that is on the drawing). There would be a lot of grading in that area because there is like a twenty-foot change in the existing property to the proposed road there. There would be some grading and a lot of different improvements there. It is not your desirable piece of property to develop.

Mr. Proffitt asked about the recreation area at the cul de sac. He said if it was possible to make that into their recreation area. He asked if that would be possible for their recreation area.

Mr. Caldwell said yes, it would be a portion of it. The requirement is 18,000 square feet what they are proposing so, it would go down to the proposed recreational area more than likely because their proposed lots would go down. It is 500 square feet per lot so how ever many lots they have. He has 35, on there so it would 17 ½ by the square feet of recreational you would have to provide. It is supposed to be centrally located but he does not see that being feasible. He is not saying that it cannot be done, but they would have to start moving units to put it somewhere centrally located. If you take away two sites here (pointing on the plat), that is 10,000, and then you take one back here

(pointing on a location on the plat), that would be 15,000. They would have some of it centrally located, it just would not be in one spot.

Mr. Proffitt said basically what he is saying, is that piece could not be expanded/large enough to cover 17, 500 square feet, almost half an acre.

Mr. Caldwell said they would take away all those units right there. He said he does agree with what Mr. Kite said, the recreational space could go on this site, it just takes away from overall development. Like he said, it is not really a requirement for a variance, their argument is the site itself, the way it is laid out, it does not compliment the development.

Dr. Pelley said they have a 3,500 square foot recreation area in the proposal. Is it possible to build a brige over to Heritage Park? In other words, giving them access to the park which he thinks would enhance the property.

Mr. Caldwell said he talked to Mr. Cansler about that and thinks probably a bridge like that would be 20,000, at least. He is not saying it is not feasible. It was a thought.

Dr. Pelley said maybe build it halfway then approach the city.

Mr. Caldwell said cost share with the city is a possible option. It is expensive to provide certain things like that.

Mr. Proffitt said to the Chairperson that he was on the Council and still is for the public/private partnership, but they should not obligate the City without the Council's approval. He is not sure it would set a precedent for the next person that came in and said they want to share costs with something that may or may not be similar to that. He does not know they can authorize that burden or not.

Mr. Kite said he does not think the issue is that they can access the park. The issue is that they have shown they can do a green space coupled with the fact that using what is on another parcel to satisfy the requirements they are supposed to meet.

Chairperson Hamilton told Dr. Pelley that he thinks he opened a can of worms that they really do not want to get involved in. If he is a mile away from this, he could easily say it is only in walking distance they could walk down to that park, and he could put 17 more trailers in. The ordinance says you have to have 500 square feet of recreation area centrally located to satisfy the requirements of this ordinance. He thinks they will be better off asking for a variance about the "centrally located" part of that than to not do it at all. Based on the original drawings is there enough square footage to meet the requirement?

Mr. Caldwell said there is, and it is kind of chalked up. He said he talked to Mr. Burchfield, and it does meet the greenspace and in coordination with trying to maximize the developer's intent, he understands the cost does not meet the requirement for a variance. He gave an example of a parking ordinance not being met at the new Walmart; will they keep the building/Walmart from there because they do not meet all the requirements. He knows they are not talking about a Walmart but a trailer park. Chairperson Hamilton said if they have a legitimate reason for them to vary those requirements, bring them to them and they will look at it but if they do not have, they are not going to allow it.

Mr. Caldwell they are just asking.

Mr. Proffitt said he added up the square footage for the three proposed spaces and it looks like it 18,242 square feet and according to the ordinance it needs to be 500 per unit and that would be 17,500 square feet so it does meet the square footage requirement.

Chairperson Hamilton asked if it would meet the requirement if they added one trailer spot instead of two. He said it is a design argument that is not their problem. They want to be as cooperative as possible, but they are limited by State law as to what they can do. It seems they have shown that adding the required recreation area or greenspace is very feasible. The property is a little bit odd shaped but not a flag lot. His argument with topography part is if they can put a trailer on it, they can put a recreation area on it.

Mr. Proffitt asked about two proposed detention ponds.

Mr. Caldwell said what they proposed is to have some of the stormwater requirements. The site itself is already conveying water to the branch, so it already getting that. What they were requesting to detain the proposed area so it would meet the predevelopment, what is existing right there. He tried to see what the predevelopment issues were, but he could not because the trailer park goes back a long time. They were proposing to do detention pond so it would meet the predevelopment of what is there right now.

Mr. Proffitt said the reason why he was asking, is if they could reconfigure this proposed detention as they enter from Jackson. It looks like they might be able to shift everything toward Jackson and pick up the that other lot.

Chairperson Hamilton asked if there was anything else from Staff's point of view.

Mr. Casteel said he said everything in the Staff Report and answered the five questions they had. He does not think it meets the requirements of the TCA, that is why he recommended denial.

Chairperson Hamilton said the five questions that need to be answered are in the application. He welcomed a motion.

MOTION: To deny the request.

MADE: Wesley Kite

SECOND: John Proffitt

VOTE: Unanimous

MOTION PASSED

2. Appeal of Administrative Ruling concerning a Stormwater Administrative ruling on the request to pay into mitigation bank in lieu of providing stormwater facilities on the site

Mr. Casteel said after looking at the ordinance and the way it was written and also talking to Chris Trew (City Attorney) about it, they found this Board cannot act on the request they asked for. The only thing this Board can address in stormwater ordinance is if there has been fine levied, they can address that, they can appeal that to them or if there is a buffer requirement that is in question, and they could act on that. That is the only two items this Board has the power to appeal. Any appeals of the mitigation they have will have to go through the court system.

Chairperson Hamilton asked if they were taking number two off the agenda.

Mr. Casteel said yes, they do not have the power to act on it.

3. Election of Officers

Chairperson Hamilton handed the meeting over to Mr. Casteel for the election of officers.

Mr. Proffitt nominated Chairperson Hamilton for the office of Chair.

Chairperson Hamilton said they need to understand that in August of 2022, he is rotating off and he is not coming back. He said he will serve another term, but it will require them to have another election. All were in favor of the Chairperson Hamilton serving another term.

Mr. Casteel then opened the floor for the office of Vice-Chairperson.

Dr. Pelley nominated Mr. Kite.

Mr. Casteel asked if he was willing to serve and Mr. Kite said yes. There were no more nominations. All were in favor of Mr. Kite being Vice-Chair.

Mr. Casteel opened the floor for the office of Secretary. He said the current secretary was Kenny Charles. Dr. Pelley nominated Mr. Charles to serve again. Chairperson Hamilton nominated John Proffitt. Mr. Casteel said they have two nominations on the floor for Secretary. He said Mr. Charles was not present to ask, but he assumed he would be willing to serve again. He took it to a vote for those in favor of Mr. Charles saying eye. There was one eye which was Dr. Pelley. There was one opposed. The vote for Kenny Charles to be Secretary failed.

Mr. Casteel then opened the floor for the vote for Chairperson Hamilton's nomination of John Proffitt. There were two in favor with none opposed. John Proffitt is the new Secretary.

The meeting was adjourned 10:15 AM.

John Proffitt, Secretary