

- I. **Call to Order.** The Board of Adjustment of the City of Athens, Alabama met in Regular session in the City Council Chambers on April 20, 2023 at 5:30 PM, after a short work session.
- II. **Roll Call.** Members Present: Chairman Greg Greene, Larry Burlingam, Greg Skipworth. Alternate Member Rod Herron voted to fulfill a quorum. Members Absent: Vice Chair Al Wassum, Jim Ernest, and Alternate Member Jeff Bass. Erin Tidwell, City Planner, along with Paige Parker, Planner and Andrea Colburn, Administrative Coordinator, were also present.
- III. **Discussion.** Chairman Greg Greene explained how the meeting operates. He stated that the Board reviews every request on a case-by-case basis. Mr. Greene also stated that because three members of the board are absent, all four members present must vote in the affirmative for a motion to pass.
- IV. **Minutes.** Mr. Skipworth offered the following resolution and moved its adoption:

“BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE CITY OF ATHENS, ALABAMA, that the minutes for the March 16, 2023 meeting be approved.”

Mr. Herron seconded the motion, and the vote was unanimous of the voting members present.

Old Business: none

New Business:

- V. **Public Hearing.** Request of Lang Chiropractic Center for a variance to reduce the required Type “A” buffer by 50% through the removal of a fence due to the presence of a berm, , located at 17277 Golden Eagle Drive, Zoned: TB – Traditional Business District.

Ms. Tidwell presented the applicant’s request. She stated that the applicant is in the process of building an office along Golden Eagle Drive that abuts the Boardwalk Subdivision to the west, or rear of the property. It was identified during the development of the site that a type “A” buffer would be required to be placed between the residential use and the office and/or commercial use.

Ms. Tidwell stated that a type “A” buffer is described in Section 6.2.6B(1) of the Zoning Ordinance as the following:

Solid wall with exterior landscaping. (8’ minimum width) This buffer can be used to minimize the width of the separation buffer while maintaining a visual and auditory separation between uses. A solid wall constructed of brick, stone, masonry, iron, wood, or products designed to resemble these materials shall be at least 6’ in height (10’ maximum height). A 6’ wide landscaping strip (minimum width) shall be located on the exterior side of the wall facing the adjacent properties. One evergreen tree shall be installed for

every 4 linear feet of wall. One understory or ornamental tree can be substituted every 4th evergreen, provided the tree is a minimum of 8' tall and 3" in caliper.

Ms. Tidwell stated the intent of the buffer is to maintain a visual and auditory separation between incompatible uses such as residential and commercial uses.

Ms. Tidwell went on to explain that this particular property situated along Golden Eagle Drive is unique in that the existing neighborhood to the rear has a berm existing along the rear properties. The applicant is making this request due to the topographical conditions that are unique to this site, the existence of the berm. Dr. Lang is requesting to only install the required evergreen plantings due since the berm is present acting as the solid wall. Ms. Tidwell explained that if the buffer were installed as required, there would be a "landscaping sandwich", essentially equating to the existing berm, the required landscaping, and the required 6' fence.

The berm as situated serves as a natural buffer, but there are special circumstances to take into account. As the City has reviewed records looking into this request, it was found that the berm is not placed into an easement or common area like one would generally expect to find, but is instead owned by each individual property owner along the back of Boardwalk subdivision. With this in mind, if the board were to approve the request, the City would request it be contingent upon the property owner (Dr. Lang) recording a restrictive covenant on his property as presented to the board (attached). The restrictive covenant ensures that if a part of the berm were to be removed by one of the homeowners adjacent to the applicant, the applicant (or subsequent property owner, should the applicant no longer own the property) would be required to erect a fence, to fulfill the requirements of the type-A buffer along the rear of the property. Ms. Tidwell stated that as written, Dr. Lang would be required to record the restrictive covenant within 21 days from approval.

Dr. David Lang, 22099 HWY 72, Suite G, Athens, AL, came forward and spoke on behalf of this request. He stated that during development of the site, he noted the Type-A buffer requirements. Dr. Lang then questioned who the fence would be erected for, since the property owners behind him have a 10-foot earthen berm acting as a buffer, and due to the height of the berm would not be able to see the fence if installed. Mr. Lang believes a fence would go beyond the intent of the Zoning Ordinance, and wouldn't serve the residents of the subdivision behind his property. Mr. Lang thinks the Type-A buffer requirements will be met through the planting of the required evergreen trees in addition to the existing berm.

Mr. Greene asked Dr. Lang if he had any issues with the restrictive covenant.

Dr. Lang responded that he has some questions for staff regarding the covenant, but he has no issues with requiring the covenant as part of the approval.

Mr. Greene asked if anyone else was present who would like to speak either for or against the request.

Dave St. John, 17210 Boardwalk Drive, Athens, AL, came forward. He stated that the berm ends about four houses down. Mr. St. John asked if this would allow other property owners along Golden Eagle Drive up to the High School to forgo a buffer as well.

Mr. Greene responded that the Board is only addressing the one request in front of them at this time.

Mr. St. John responded that he is concerned that approving this request would mean other property owners along Golden Eagle Drive that do not have the berm as a buffer would be exempt from erecting a buffer. He would be opposed to this request if it meant forfeiting the buffer requirements for those properties.

Mr. Skipworth answered Mr. St. John, stating that there's only room for two or so more businesses along Golden Eagle Drive, and each case would be addressed individually if similar requests were made.

Mr. Michael Griffin, 17664 Eastmoore Street, Athens, AL, came forward and provided a synopsis of the history on this property. Mr. Griffin stated that he is the engineer who designed the public improvements in this area. He stated that one of the requirements by deed for the properties along Golden Eagle Drive according to what he has been told is that the School Board required a buffer to be placed. The agreed upon buffer is a 6' tall fence with brick columns and evergreen landscaping. Mr. Griffin then stated that when the school board realized the lots would be unsaleable because of the limited depth, the board asked the developer at that point in time to construct the berm. Mr. Griffin stated that the berm has caused drainage issues.

Mr. Griffin explained that when he came in as the City Engineer, he required the back of the residential lots to be raised to allow for water to flow along the side lot lines to address the drainage. Another issue they ran into was buffering requirements between the church to the south. He stated they have constructed a wood fence to act as a buffer.

Mr Griffin's 3- minutes expired at this point, but the Chair gave him leave to continue.

Mr. Griffin believes the existing berm doesn't meet landscaping requirements set forth in the Zoning Ordinance. Specifically, he believes the width is not in compliance with berm standards.

Mr. Griffin also believes there is a safety concern with the berm. He relayed that during the 4th of July fireworks, people like to sit atop the portion of the berm which is on his private property. Because there isn't a buffer, the berm doesn't appear to be private property. Mr. Griffin stated that he has found grocery carts from Dollar General on the berm. Mr. Griffin believes fulfilling the Type-A buffer requirements completely will help people stay in their respective areas where they need to be.

Mr. Griffin further inquired whether this request met the criteria for a variance. Mr. Griffin stated he did not want to see a precedent set. Mr. Griffin has already spoken with the owner of Griggs

Orthodontics. Mr. Griffin has given Dr. Griggs permission to use some of the dirt from Mr. Griffin's private berm to fill in a low spot on his property so long as Mr. Griggs erects a Type-A buffer. Mr. Griffin doesn't want to see a precedent set of not requiring a complete buffer between traditional neighborhoods and businesses. The berm was intended to exceed the buffer requirements, not take the place of the buffer requirements.

Mr. Griffin asked how, through multiple years of development, enforcement of the proposed restrictive covenant would be possible.

Mr. Skipworth asked if Mr. Griffin is against the variance request or the berm.

Mr. Griffin responded that he is against both.

Mr. Skipworth clarified it is his understanding that if an individual property owner removed the berm, Mr. Lang would be required to put up a fence.

Mr. Griffin stated his concerns about how enforcement would truly occur. Mr. Griffin believes this is creating a legal conundrum.

Mr. Skipworth said they're not just talking about a fence.

Mr. Griffin stated that reducing the buffer requirement by 50% is the request, and it's specific to the fence.

Mr. Skipworth stated they've already done that, countless times. In his 6 or 7 years doing this, they've never held everyone to the full standard of the ordinance. Right now, the Board is just talking about whether or not Mr. Lang has to have a fence.

Mr. Griffin stated he believes that he's put forward his issues with the item, and the item could still be contested after the meeting tonight. His point is that there are still some questions unanswered, and there are some gray areas being created.

Mr. Skipworth asked why the developer of the neighborhood didn't factor in the buffer requirements. Mr. Griffin stated the buffer requirements weren't applicable to the residential inhabitants, because they were the first there. The buffer would be a requirement for the party that came afterward.

Mr. Skipworth asked why the developer didn't address the berm being nonconforming.

Mr. Griffin said because now the berm resides on private properties.

Mr. Greene asked if anyone else was present to speak for or against the item.

Ms. Tidwell came forward and said that staff worked with legal counsel to construct the proposed restrictive covenant. Staff believes this request meets the condition of a topographical hardship. The conditions are unique to this property. If there were not a significantly sized berm present behind Mr. Lang's business, the city would not support this request.

Mr. Greene asked again if anyone else was here to speak. There was no response.

VI. **Resolution.** Mr. Skipworth offered the following resolution and moved its adoption:

WHEREAS, LANG CHIROPRACTIC CENTER, INC., an Alabama corporation, (the "Owner") is the owner of the following described real property located in Limestone County, Alabama:

Lot 3, as shown on the Final Plat of Dexter Street Subdivision, recorded at Plat Book J, Page 105 in the Office of the Judge of Probate of Limestone County, Alabama
(the "Property");

WHEREAS, the Property is zoned as *TB Traditional Business*, and the Owner plans to construct and operate a chiropractic center on the Property;

WHEREAS, residential real properties lie adjacent to the Property on its western border, and those residential properties are zoned as *TN2 Traditional Neighborhood 2*;

WHEREAS, Section 6.2.6.B and Table 6-1 of the *Zoning Ordinance of the City of Athens, Alabama* would require that the Owner install and maintain a Type A Buffer along the western border of the Property;

WHEREAS, a Type A Buffer requires the installation of a solid wall and landscaping;

WHEREAS, the Owner has requested a variance from the requirement of a solid wall, because there is a landscaped berm, stabilized with ground cover, and lying immediately adjacent to the western boundary of the Property, that already serves as an effective, natural buffer; and

WHEREAS, the Zoning Board of Adjustment finds that the request for a variance should be approved because (a) the existing berm is an exceptional condition pertaining to this site's specific topography, (b) requiring the solid wall to be built in the face of the existing berm would impose an unnecessary hardship on the Owner, (c) granting the variance would essentially leave the Owner in the same position – not a better position – than other similar property owners, and (d) the policy objectives of the *Zoning Ordinance* as to buffers would still be satisfied if the variance is granted.

THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment for the City of Athens, Alabama, at its regular meeting on April 20, 2023, that the board does hereby grant a variance from the buffer requirements of the *Zoning Ordinance*, as follows:

1. The Owner is granted a variance from the requirement in Section 6.2.6.B and Table 6-1 of the *Zoning Ordinance* that the Owner shall construct and maintain a "solid wall" as a part of the Type A Buffer separating the western border of the Property from adjacent landowners to the west.

2. However, the Owner is *not* granted a variance from the exterior landscaping requirements that are a part of the Type A Buffer requirement (such


as, for example, the requirement of a landscaped strip with trees).

3. The variance described herein is granted due to the existence of a landscaped berm situated adjacent to the western border of the Property. An express condition of this variance is that should all or part of that berm ever be removed (or altered in such a way that the City of Athens determines that it is no longer effective as a buffer between the Property and its neighboring properties to the west), then the Owner, or its successors and assigns, will be required to construct and maintain a solid wall with exterior landscaping along the Property's western boundary, to replace the berm. In order that this condition may be enforced in the future, the Owner must cause the Restrictive Covenant attached to this Resolution as Exhibit 1 to be approved and executed by the Owner (and its mortgagee) and recorded in the records of the Judge of probate of Limestone County, Alabama.

4. The Owner shall have twenty-one (21) days from the date of this Resolution to cause the Restrictive Covenant to be so approved and recorded (at the expense of the Owner), and if the Restrictive Covenant is not so approved and recorded by such date, then this Resolution shall be void and of no effect.

Mr. Herron seconded the motion, and the motion passed unanimously of the voting members present.

VII. **Adjournment.** There being no further business to come before the Board, Chairman Greene duly and properly adjourned the meeting.


Chairman

Attest: 
Secretary