

- I. **Call to Order.** The Board of Zoning Adjustments of the City of Athens, Alabama met in Regular session in the City Council Chambers on June 15, 2023 at 5:30 PM, after a short work session. Interim Board Chair Greg Skipworth called the meeting to order, and requested a roll call to note attendance.
- II. **Roll Call.** Board Members Present: Interim Chair Greg Skipworth, Larry Burlingame, Jim Ernest, and Rod Herron. Erin Tidwell, City Planner, along with Paige Parker, Planner and Andrea Colburn, Administrative Coordinator, were also present.
- III. **Discussion.** Greg Skipworth opened the meeting by stating the number of cases before the Board and that the Board would hear each case separately. Mr. Skipworth went on to say that the City will explain each request, and then those present on behalf of, in favor, or against the items will have an opportunity to speak.

Old Business: none

New Business:

- IV. **Public Hearing.** Request of Lang Chiropractic Center at 17277 Golden Eagle Drive, regarding a variance to reduce the Type "A" buffer by 50% through the removal of a fence, Zoned: TB – Traditional Business District.

City Planner Erin Tidwell described the request. Ms. Tidwell described the applicable zoning ordinance, and stated that Staff has no issues in general with this request due to the unique presence of the land berm. Ms. Tidwell described the restrictive covenant that is currently in place dictating that Dr. Lang must erect a fence if any portion of the aforementioned berm is removed by adjoining homeowners. Ms. Tidwell clarified that if the berm were not present as a topographical hardship, Staff would have a different view of this request.

Greg Skipworth asked if the applicant was present to speak on behalf of the item. At this time, Dr. David Lang (1703 Ole Carriage Dr. Athens) came forward.

Dr. Lang stated that his reasoning for this request is that the fence requirement is six feet, and the berm is ten feet in height, as is the wall of evergreens that are being planted on site. Dr. Lang stated that he questioned who the fence was intended to serve, and was told that the fence was for residents of the adjoining subdivision. Dr. Lang explained that for a resident in the subdivision to even see the fence, they'd have to get in their car, leave the subdivision, and drive to his side of the property. Therefore, he believes the fence will serve no purpose.

Dr. Lang also believes there would be an issue with mowing the backside of the berm if a fence were placed so near to the base of it. He believes the trees are sufficient for a buffer, and a fence would serve no purpose for the residents, since the residents can't see it from their property. Dr.

Lang reiterated the terms of the restrictive covenant that he's filed and stated that if someone removes a portion of the berm, he will erect a fence at that time.

Mr. Skipworth asked if the restrictive covenant had already been filed. Dr. Lang answered that yes, the restrictive covenant is currently in place.

Mr. Skipworth asked if anyone was present to speak for or against the request. At this time, Zachary Pylant (17700 Eastmoore St. Athens) came forward and stated that he is opposed to this request.

Mr. Pylant stated that when he purchased his property, he did so with an understanding that whoever came in on the adjoining property would be responsible for erecting a fence. Mr. Pylant stated that the only reason he has not already taken down his portion of the berm is because his covenant does not allow residents to erect privacy fences. Dismantling his portion of the berm, he said, would eliminate a barrier between his property and the businesses across the street.

Mr. Pylant further stated that three other properties have been required to erect fences, and to not require Dr. Lang to do the same wouldn't be fair and would set a precedent. Mr. Pylant responded to a comment about the fence being on the property line by stating that the fence would not be permitted on the property line. Mr. Pylant is the water distribution supervisor, and there's a water line that runs along the property line; the fence would have to be behind that water line.

Mr. Skipworth asked Mr. Pylant what purpose the fence would serve if it can't be seen from their respective properties. Mr. Pylant responded that if Dr. Lang were to erect a fence, he would take down his portion of the berm. Mr. Pylant believes the berm never should have been allowed by the City in the first place.

Mr. Skipworth noted that with a six foot tall fence, it wouldn't be visible to residents on the opposing side of the berm. Mr. Pylant responded that he doesn't care whether or not he can see the fence at this time; he has every intention of dismantling the berm. Mr. Skipworth reiterated that a restrictive covenant is in place that would provide for Dr. Lang to erect a fence if the residents dismantled the berm. Mr. Pylant asked what the timeline was for that, and what power the Board would have if Dr. Lang doesn't abide by the covenant.

Mr. Skipworth responded by restating the terms of the covenant. Mr. Pylant responded that it's still not right; multiple people have already been made to do this. Mr. Skipworth stated that the Board hasn't made anyone do anything. Mr. Pylant agreed, but stated that the Zoning restrictions have.

Mr. Skipworth stated that the Board assesses each case individually. Mr. Pylant stated that it would be understandable if there were two cases across town from each other; however they're referring to the same berm.

Mr. Skipworth asked when the berm was erected, to which Mr. Pylant responded that the berm was erected when the subdivision was built. Mr. Skipworth questioned the restrictive covenants within the subdivision, to which Mr. Pylant stated that their covenants restrict them from building a privacy fence, but he intends to dismantle his portion of the berm when the adjoining businesses erected a fence.

Jim Ernest asked Mr. Pylant if the berm was his property. Mr. Pylant responded that yes, it was on his property, and he can take it down anytime he wants but he can't build a privacy fence in place of the berm. Even if he could, he concluded, the residents were the first ones there and the business owners that came in later should therefore be required to erect a fence.

William Biesanz (17714 Eastmoore St. Athens) came forward and spoke in opposition to the request. Mr. Biesanz pointed to the presentation and identified which driveway is his in a photo of the berm. He mentioned the Waffle House, Dollar General, Jack's, and Athens High School that are nearby although not visible in the presentation photo due to the presence of the berm. Mr. Biesanz explained that those businesses generate traffic and pedestrians, and his main concern is pedestrian access to his property if a fence is not erected. Mr. Biesanz said that when the berm was erected, he was under the false assumption that it was some sort of water main or utility easement. Mr. Biesanz has only lived in the residence for approximately six months, and when he learned that the berm wasn't necessary had every intention of taking it down.

Mr. Skipworth, at this time, reiterated the terms of the restrictive covenant between Dr. Lang and the City. Mr. Biesanz acknowledged this, but stated his understanding is that if this request is approved, all other adjacent property owners will not have to erect a fence. Mr. Skipworth answered that the restrictive covenant would require each tenant to abide by the same guidelines. Mr. Biesanz believes this isn't an immediate concern, but he's speaking to twelve months in the future and beyond. He lives and works in the local community, and his intention is to stay in the residence long-term and that's what he's looking toward.

Mr. Ernest asked if the subdivision had an HOA or if the builder still holds the HOA. Mr. Biesanz responded that the HOA is still run by the builder until the last home is sold. Mr. Biesanz's concern is that this decision would set a precedent for future development.

Michael Griffin (17634 Eastmoore St. Athens) came forward. Mr. Griffin asked if the minutes from last month's meeting had been approved. Mr. Skipworth responded that they had not. Mr. Griffin stated that he wanted to obtain a copy of last month's approved minutes. Also, the comments that he made in the last meeting were not intended to come across as him being difficult; his intentions are to remain professional. However, his previous comments from the last meeting stand. Mr. Skipworth agreed with Mr. Griffin's professionalism.

Mr. Skipworth closed the public hearing after ensuring no one else was present to speak to the request. Mr. Skipworth called for a motion.

- V. **Resolution.** Rod Herron offered the following resolution and moved its adoption:

THEREFORE, BE IT RESOLVED that the Board of Zoning Adjustments for the City of Athens, Alabama, at its regular meeting on June 15, 2023, that the board does hereby grant a variance from the buffer requirements of the Zoning Ordinance.

Larry Burlingame seconded the motion. The subsequent vote was as follows: three affirmative votes (Greg Skipworth, Larry Burlingame, and Rod Herron) and one abstention (Jim Ernest). Due to only four members of the Board being present, and therefore an affirmative vote is needed from all members for a motion to carry, **this motion failed to pass.**

VI. Public Hearing. Request of Grayson Bailey Landscaping Design regarding a variance to Zoning Ordinance Section 6.2.6.B, to allow for the placement of a six-foot solid screen fence and two staggered rows of evergreen trees, at Athens Marketplace located at 1031 Kelli Dr. Athens, AL 35611, and Zoned B-2, General Business District.

Ms. Tidwell described the request and the applicable zoning ordinance section. For this item, Staff has no recommendation, and would leave the decision at the discretion of the Board.

Mr. Skipworth asked if the applicant was present to speak on behalf of the item. Mr. Ryan Slattery (715 Market St. Chattanooga, TN) came forward as representative of the request. Mr. Slattery stated that he believes this request would actually exceed zoning requirements.

Mr. Slattery described the reason for the request (a list of which was provided by Mr. Slattery prior to the meeting and included in the Board's packets of information). Mr. Slattery explained the uniqueness of their situation, the first of which is a 20-foot easement that they're unable to plant in. The proposed solution to this would be to put up a fence on the far side of the easement, closest to the residents. He further explained that they are proposing the use of a long-lasting vinyl fence from Athens Fence Company.

Mr. Slattery also stated that they tried to select plantings that exceeded the opacity requirements. He pointed to Harbor Freight and their landscaping as an example. At maturity, the trees they've selected would grow 50-60 feet tall.

Mr. Slattery stated that the reason they are requesting the trees be spaced farther apart is because the proposed spacing is the recommended spacing for these particular types of trees. Per his experience, closer spacing would result in the trees not doing well long-term.

Mr. Slattery explained that a fence is something you can't walk through and provides protection to the residents on the adjoining property, particularly from the homeless activity to the east of the site.

Mr. Slattery went on to say that the sewer easement along the property line that services residents of the adjoining subdivision existed prior to the development of the property in question. The

existence of such prevents the applicant from planting along the property line, as would otherwise be expected.

Mr. Slattery believes that the granting of this request would provide a level of security that exceeds code requirements. He states that literal interpretation of the code would provide an inferior result to what is being proposed. Mr. Slattery believes that this request is in harmony with the spirit of intent of the Zoning Ordinance, specifically section 6.2.6.B(2).

Mr. Herron clarified where the fence would be located in relation to the trees. Mr. Slattery stated the fence would be on the north side of the trees.

Mr. Skipworth asked if the fence would be on the exterior or interior of the landscaping. Mr. Slattery answered that he understands landscaping would typically be on the outside of the fence, but in this case the fence would be on the exterior, facing the residences, because the landscaping would have to go down the hill outside of the utility easement.

Grayson Bailey (22746 Big Oak Dr. Athens) came forward and stated that this request is superior to what's actually on the original plan. The plants being proposed are better and hardier plants that will fare better than the originally-intended plants. Mr. Bailey states that if he were a resident of the adjoining subdivision, he'd want the fence in place for security purposes.

VII. Resolution. Jim Ernest offered the following resolution and moved its adoption:

THEREFORE, BE IT RESOLVED that the Board of Zoning Adjustments for the City of Athens, Alabama, at its regular meeting on June 15, 2023, that the board does hereby grant a variance from the sign requirements of the Zoning Ordinance.

Larry Burlingame seconded the motion, and the motion passed unanimously of the voting members present.

VIII. Minutes. Larry Burlingame offered the following resolution and moved its adoption:

"BE IT RESOLVED BY THE BOARD OF ZONING ADJUSTMENTS OF THE CITY OF ATHENS, ALABAMA, that the minutes for the May 18, 2023 meeting be approved."

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

IX. Ms. Tidwell came forward and stated that at the last meeting, Board Chair Mr. Greene had indicated that he may want Staff to research, prepare, and present some proposed changes to the sign requirements of the Zoning Ordinance. Ms. Tidwell asked if the Board would request she pursue that. As such,

X. Resolution. Rod Herron offered the following resolution and moved its adoption:

THEREFORE, BE IT RESOLVED that the Board of Zoning Adjustments for the City of Athens, Alabama, at its regular meeting on June 15, 2023, that the board does hereby request Staff seek proposed amendments to the sign requirements of the Zoning Ordinance.

Larry Burlingame seconded the motion, and the motion passed unanimously of the voting members present.

Meeting adjourned at 6:05pm by acting Board Chair Greg Skipworth.


Chairman

Attest: 
Secretary