



CITY OF SOUTH FULTON
ZONING BOARD OF APPEALS
REGULAR MEETING
THURSDAY, APRIL 19, 2018 at 1:00 P.M.

Present: Chair Aaron Johnson, Nicholas Wilson, Geneasa Elias, DeAndre Mathis, Calvin Bennett, Sareena Beasley, Brenda Jenkins

Absent: Regina Mincey

Meeting Called to Order: Chair Aaron Johnson called the meeting to order at 1:00 p.m. Following the roll call by Interim Director Shayla Reed of Community Development Services, seven of eight members were present. Therefore, there was a quorum.

III. APPROVAL OF MINUTES February 15, 2018 and February 29, 2018

Chair Aaron Johnson asks for approval of the minutes for both the February 15, 2018 and February 29, 2018 Zoning Board of Appeals meetings. He asks the Commissioners if there any corrections, and Brenda Jenkins asks to correct the verbiage within the February 15, 2018 meeting from unanimously for approval to unanimously for deferral.

Board Member Brenda Jenkins makes a motion to approve all minutes as amended and **Board Member Sareena Beasley** seconds.

The vote passes unanimously for approval.

V. NEW BUSINESS

a. Public Hearing V17-011 for 4644 Marching Lane

Chair Harold Aaron Johnson sounds the first case. Planner II Dana Gray provides details for V17-011 at 4644 Marching Lane within the Lexington Park Subdivision. He states that applicant Michelle Macauley for LeCraw engineering requests to reduce the side yard setback from 7.5 feet to 3.5 feet. He proceeds to show maps and information pertaining to the case through a PowerPoint presentation. Staff recommends approval.

Michelle Macauley (applicant) claims that due to a surveyor's error, the home was constructed within the side yard setback. She also states the that the two homes are 18 feet apart so they still meet the home separation requirement. She states that the neighbor is in support of this case.

Nicholas Wilson makes a motion to open for public comment, and Brenda Jenkins seconds. The vote passes unanimously to open public comment.

Kisha Rumph states that she and her husband are looking to purchase the home. She also states to the Board that she would appreciate their help.

Kalvin Bennett makes a motion to close public comment, and Sareena Beasley seconds. The vote passes unanimously to close public comment.

Board Member Geneasa Elias asks if the 7.5 side yard setback was a condition of zoning that was approved in 1996.

Michelle Macauley answers yes.

Board Member Geneasa Elias asks who actually built the house.

Michelle Macauley answers D.R. Horton.

Board Member Geneasa Elias asks Staff if the variance process was the appropriate process because this was a surveyor error. She further asks if this should have been a modification of the zoning condition.

Interim Director Shayla Reed states that the prior Director advised to go this route.

Board Member DeAndre Mathis states that he is concerned with the footage between homes. He states that the intent was to have 7.5 feet on either side of the home. He says that the home could sell to another owner, and should they redevelop the property, this approval could cause an issue. He questions if a maintenance vehicle could access the side of the house. He states this house would have to get permission from the neighbor to access part of their side yard.

Michelle Macauley says D.R. Horton did not build this house close to the property line on purpose. The home at time of permitting met all required conditions. It was the findings of the final surveyor that brought this error to their attention.

Board Member DeAndre Mathis states that if the neighbor chooses to build a fence, that would reduce the side yard of this house and limit any kind of maintenance.

Michelle Macauley answers that both homeowners are in agreement of this case and this would go on public record and make future homeowners aware of the setbacks.

Board Member Sareena Beasley asks Staff about the proper route to take for this case.

Interim Director Shayla Reed states that this should have gone through the modification process as opposed to the variance process.

Board Member Brenda Jenkins states that since the case has made it to the ZBA hearing, she does not have a problem ruling on it one way or the other. She further states that she does have a concern if the house sells, the owners will be contending with this situation.

Michelle Macauley answers that the variance is a relief and they do not want to have to tear the house down. She states that's she is before them today.

Board Member Calvin Bennett asks if the Board could "kick this back."

Interim Director Shayla Reed states that current Staff within Community Development Services prefers the case undergo the proper process.

Chair Aaron Johnson states that the house is already constructed and asks if equipment can be accessed from the other side.

Michelle Macauley answers yes.

Interim Director Shayla Reed states that she recommends deferral so Legal can weigh in on this matter.

Board Member Geneasa Elias states that a survey error is not a hardship. She states that only the governing body can go back and modify that condition and suggests that the applicant be allowed to withdraw the variance application and submit for a modification to the zoning.

Michelle Macauley states that the Director at the time the case was introduced to Staff made the decision to undergo the variance process for this case.

Chair Aaron Johnson asks if there is a motion.

Board Member Calvin Bennett makes a motion to defer until Staff has time to consult with Legal and **Nicholas Wilson seconds**.

The vote passes for deferral, 5-1.

Interim Director Shayla Reed states that Staff will consult with Legal before the applicant withdraws. She states if Legal decides the ZBA must make a decision, the next ZBA meeting will include a withdrawal request and the applicant will be heard by the proper board.

Michelle Macauley asks if she withdraws, can Staff wave the filing requirement and be on the next agenda for modification.

Interim Director Shayla Reed states that it is at the Mayor's discretion to amend agendas.

b. Public Hearing V18-003 for 764-768 Red Wolf Run within the Wolf Creek Subdivision

Chair Aaron Johnson sounds the next case. Planner II Dana Gray provides details for V18-003 at 764-768 Red Wolf Run within the Wolf Creek Subdivision. He states that applicant Abbas Heidari of ARC Engineering requests a variance for relief from Article 34.5.10 Section E.3, which states that residential lots less than one acre in size may not include a Restricted Pipeline Area. He proceeds to show maps and information pertaining to the case through a PowerPoint presentation. Staff recommends approval and that the owner cannot build in the restricted area.

Mark Miller (representing Abbas Heidari) states that he is with ARC Engineering. He gives information about the subdivision and that in 2005 this article was not in the Resolution. He states that they are 400 feet away from the pipeline and will not build within the restricted area.

Sareena Beasley makes a motion to open for public comment, and DeAndre Mathis seconds. The vote passes unanimously to open public comment.

Chair Aaron Johnson asks if there is anyone in support or against the variance.

No one is present for public comment.

Chair Aaron Johnson asks if there is a motion to close public comment.

DeAndre Mathis makes a motion to close public comment and Brenda Jenkins seconds. The vote passes unanimously to close public comment.

Board Member Geneasa Elias requests to be shown the plat showing the restricted area. She proceeds to ask if the area shown in green is the lot area or the building footprint.

Planner II Dana Gray explains that it is the buildable area.

Board Member Geneasa Elias asks where the building footprint is in relation to the green area.

Planner II Dana Gray explains that the submitted site plan does not show the building footprint.

Board Member Geneasa Elias states that her concern is if she was to vote for approval that there is an appendix in the Resolution that restricts any building in that restricted area.

Planner II Dana Gray explains that Staff has recommended approval and that they cannot build in that area.

Board Member Geneasa Elias states that the existing lot will be less than an acre.

Board Member Brenda Jenkins asks if the gas company has responded to the applicant's attempts at contacting them.

Planner II Dana Gray responds no.

Chair Aaron Johnson asks if there is a motion.

Board Member DeAndre Mathis makes a motion to approve based on Staff's recommendation that the owner may not build in the restricted area and Board Member Calvin Bennett seconds.

Board Member Brenda Jenkins asks if the future owner of this property must allow the gas company on to their land.

Interim Director Shayla Reed states that it is an easement.

Board Member Nicholas Wilson states that most properties have easements for these types of things, and if the owner wants to make an addition, they would be constrained.

Board Member Geneasa Elias states the Resolution does allow for temporary structures to be placed in the Restricted Pipeline Area, but that it prohibits permanent structures like fences or buildings. She further states that the request is simply relief from the one-acre minimum lot size.

Chair Aaron Johnson asks that the motion be restated.

Board Member DeAndre Mathis makes a motion to approve based on Staff's recommendation that the lots may be under one acre in size and that the owner may not build within the Restricted Pipeline Area and **Board Member Calvin Bennett** seconds.

The vote passes for approval, 5-1, with Staff's recommendation that the owner may not build in the restricted area.

c. Public Hearing V17-009 at Old National Highway and Bigwood Trail

Planner II Dana Gray provides details for the third case which is V17-010 at Old National Highway and Bigwood Trail. He states that applicant Dr. Paul McKoy of Renewed Medical Concepts, LLC, requests a variance for relief from: (1) Article 18.3.1.E to reduce the required 40-foot front yard setback to 20 feet; (2) Article 12D.3. b.1 to reduce the required 50-foot minimum distance between the dumpster and the adjacent residential district to 43 feet; (3) Article 4.23.1.B to reduce the required 25-foot undisturbed buffer to 15 feet along the north property line; and (4) Article 4.23.1.B to eliminate the required 50-foot undisturbed buffer and incidental 10-foot improvement setback along the east property line. He proceeds to show maps and information pertaining to the case through a PowerPoint presentation. He

concludes by stating that Staff recommends denial of the first variance request and approval of the three remaining requests.

Dr. Paul McKoy (applicant) wants to provide a medical complex that is accessible to those in the community so they don't have to go across town. He states that they need ample parking for their customers and for the right clientele like Piedmont medical properties.

Board Member Nicholas Wilson makes a motion to open public comment and Calvin Bennett seconds. The vote passes unanimously to open public comment.

Chair Aaron Johnson asks if anyone is here in favor of this case.

Joyce Armster asks why didn't the applicant go before Mayor and Council before they came before the Board.

Interim Shayla Reed states that they did not have to go before Mayor and Council because the request is neither a rezoning nor a modification

Chair Aaron Johnson asks if anyone is here against this case.

No one is present against the case.

Board Member Sareena Beasley makes a motion to close public comment and Calvin Bennett seconds. The vote passes unanimously to close public comment.

Board Member Geneasa Elias states that she will support Staff's recommendation to deny variance request number one. She states her concerns about variance requests two and three are that it is still adjacent to residential even through it's unbuildable land. The buffers were put there to protect the residents. She asks if underground detention was considered for this site with respect to variance request number four.

Dr. Paul McKoy states they did consider other methods, however the cost was high. He further states that the placement of the dumpster was originally in the middle of the two buildings, but that he did not want customers to come in and see the trash cans, so they moved the dumpsters.

Board Member Geneasa Elias asks if the applicant considered making the building smaller.

Dr. Paul McKoy states they did ask their architect about scaling down the building. He states that architect explained that it would make it worse for other medical business to come in. He also explains that potential businesses require adequate parking.

Board Member Nicholas Wilson asks if these will be medical facilities and if they have tenants lined-up yet.

Dr. Paul McKoy says it will depend on how much parking is provided.

Board Member Nicholas Wilson states is concerned the buildings could be vacant, and proposes building up instead of spreading out into two separate buildings.

Dr. Paul McKoy says each building will provide different services like emergency services which would require ASE requirements while the other may not.

Board Member DeAndre Mathis states he is inclined to approve all but number two. He explains how when the Board votes, they set a precedence for similar situated individuals. He further states that the

applicant can achieve the 50-foot distance for the dumpsters by moving the building over, as there is also a smell nuisance to take into consideration.

Board Member Sareena Beasley asks about alternative options for the stormwater facility and if there are more advanced ways to achieve their goal.

Interim Director Shayla Reed states that underground facilities are preferred. The cost, which is not a hardship, is a strong factor in why the applicant proposes above-ground detention. The City Engineer has noted some of his concerns, and this was not one of them. She concludes by requesting that they refer to the Engineer's notes within the provided Staff Report.

Board Member DeAndre Mathis asks if they have considered moving the dumpster over 7 feet so it is 50 feet from the property line.

Dr. Paul McKoy says, yes, however they created this proposal with aesthetics in mind.

Board Member Brenda Jenkins asks if the applicant has more evidence to substantiate hardship regarding the parking for variance request number one.

Dr. Paul McKoy answers yes, that they have to compete to have the right businesses as tenants. They need enough parking spaces, otherwise, they won't come.

Board Member Brenda Jenkins asks if the applicant has a process for bringing business into the building prior to opening.

Dr. Paul McKoy says yes, that they have to compete to have the right businesses as tenants. They need enough parking spaces, otherwise, they won't come. He states that he has other businesses that have parking issues, and does not want that to happen here.

Board Member Brenda Jenkins brings up the residential properties on the other side of the property.

Dr. Paul McKoy states that that property owner built a berm some time ago knowing that homes will not be built on what is now their property.

Board Member Brenda Jenkins states that the detention pond will be behind the berm and will not be visible.

Dr. Paul McKoy states there was a site line study done. He states that the berm is 40 feet high, separating the homes from his property.

Board Member Geneasa Elias asks Legal that if the Board was to support Staff's recommendation of approval, would it be appropriate for her to support approval per the two conditions specified by the City engineer in reference to variance request number four pertaining to the detention pond.

City Attorney Christa Freeman asks to be able look that up.

Board Member Calvin Bennett states he appreciates the applicant bringing this project to the community. He further states that he had physical therapy in the Windy Hill area and he did not like going out there and had a rough parking experience. He states that we are a new city and he agrees with the Board, however he is concerned about setting precedence as well.

Dr. Paul McKoy states that he is not just a developer, that he wants this project to be the pace-setter.

Board Member Calvin Bennett makes a motion to approve variance request number one against Staff's recommendation and **Board Member DeAndre Mathis** seconds.

Board Member Brenda Jenkins states that her reasoning to approve request number one is that he brings a quality product and they need the parking which does not impede on any residential property.

Board Member Sareena Beasley asks if the first variance would affect the sidewalk.

Dr. Paul McKoy states that it will not affect the sidewalk.

Planner II Dana Gray shows the Board where the sidewalk and 25-foot landscape strip are on the site plan.

Chair Aaron Johnson repeats the motion made by Board Member Calvin Bennett.

The motion receives 3 yays and 3 nays, and Chair Aaron Johnson states that he agrees with Staff's recommendation to deny variance request number one, so the motion fails.

Board Member Nicholas Wilson makes a motion to approve variance requests two and three and **Board Member Brenda Jenkins** seconds.

The motion receives 3 yays and 3 nays, and Chair Aaron Johnson votes to carry the motion for approval. The motion passes for approval of variance requests two and three.

Board Member Geneasa Elias moves to approve variance request four with the Engineer's and **Board Member Sareena Beasley** seconds.

The vote passes unanimously for approval of variance request four.

VI. OTHER BUSINESS

Board Member DeAndre Mathis observes that the applicant emphasized the importance of obtaining variance request one due to the parking, and asks if the applicant will continue with the project without obtaining this variance.

Dr. Paul McKoy states that without the parking, the project cannot proceed.

Board Member Sareena Beasley asks about the applicant's intention for employment.

Chair Aaron Johnson states that this is not the time to ask these questions and they will have to be asked after the hearing.

Board Member Brenda Jenkins asks if the applicant can appeal.

Interim Director Shayla Reed states that an appeal can only be heard by a superior court, not by this Board. When the applicant receives his denial letter, that information will be provided. She states that Legal is here so they can ask her questions.

Board Member Geneasa Elias asks Legal about the case at 4644 Marching Lane. She asks if the applicant should have applied for a modification to the zoning conditions instead of a variance request.

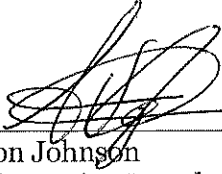
Interim Director Shayla Reed states that Legal is still working on that issue.

Legal states that the request should have gone through the modification process, which would go before City Council. She further states that this application should be withdrawn and then follow the modification process.

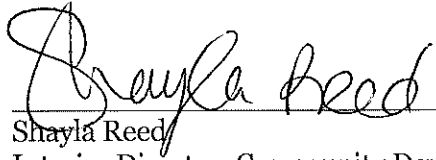
VII. ADJOURNMENT

Chair Aaron Johnson asks for a motion to adjourn. **Board Member Brenda Jenkins** makes a motion to adjourn and **Board Member Calvin Bennett** seconds.

The vote passes unanimously to adjourn.



Aaron Johnson
Chair, Zoning Board of Appeals



Shayla Reed
Interim Director, Community Development Services Department