

ATHENS TOWNSHIP
PLANNING COMMISSION MEETING
7:00 pm Athens Township Government Center
Minutes of Thursday, September 21, 2017

1. *Pledge of Allegiance:* The Pledge of Allegiance was recited.
2. *Roll Call:* The meeting was called to order at 7:05 pm by Chairman Dave Beckstrom. Members present were Marlys Balfany, Cindy Anderson, Jake Carpenter, and Dave Henderson, and Zoning Administrator Chloe McGuire Brigl. Also present were applicants Dean Erickson and Samir Salama, and Mike Nimzo.

The following residents were in attendance: Alex Haine and Bob Hanson.

3. *Minutes of August 17, 2017:* A motion to approve the minutes as written was made by Henderson, seconded by Anderson. Motion carried unanimously.
4. *Open Forum:* Beckstrom introduced the open forum and described the open meeting process. He also asked residents to sign in on the attendance sheet for the public hearing section of the meeting. Resident Bob Hanson asked if there had been any movement on the asphalt plant. Beckstrom described that the paperwork was completed at the beginning of September, and asked Hanson if he had seen any construction on-site. Hanson said he has not seen any activity in the area. He also asked about the open-endedness of the permit. Beckstrom said that the permit ends in the summer of 2018. Hanson asked if there can be winter operation. Beckstrom said that he believed the MnDOT project ceases in October, but that they can set up the site and then start next year. Beckstrom closed the open forum portion of the meeting.

5. *Public Hearings*

Variance for Dean Erickson at 24784 Ulysses Ct NE: Beckstrom asked McGuire Brigl to describe the request. McGuire Brigl stated that Erickson is applying for a variance on his commercial property, off Highway 65, to build another pole structure. She noted that Erickson was granted an administrative variance by Jim Braun, the previous Zoning Administrator, and that this request is meant to make the request official and go through the proper Township channels. The request is for a 60 by 60 foot structure, within 3 feet of the side lot line and 25 feet of the rear lot line. McGuire Brigl said she is recommending approval of the variance, because it fits with the surrounding properties. Specifically, the other commercial properties have similar setbacks to those required. Additionally, the residential properties adjacent to the subject property provide a dense tree cover between the lots, and the closest residential home is more than 300 feet from the rear lot line.

Henderson asked what the setback is on the property to the south. McGuire Brigl stated that the property to the south is approximately 10 feet from the lot line. Balfany asked if the applicant

owns other properties in the area, Erickson responded that he does own surrounding buildings, and that he uses the buildings to the south for storage. Henderson asked what the proposed building would be for. Erickson stated that the building would be heated storage, and provide him space to put a snow plow and trucks in the winter.

Henderson asked the applicant about the administrative variance. He asked how much the administrative variance cost. Erickson said he did not pay anything to get Jim's help on this request, and he has not had to get a variance in the past.

Beckstrom asked if the neighbors were notified of the meeting. McGuire Brigl stated yes, they were. She sent mailings at the beginning of the month. Beckstrom noted there were no neighbors in attendance.

Henderson asked what exactly the setbacks would be reduced to. McGuire Brigl stated that the applicant provided two separate options for the Planning Commission to review. The applicant's first option showed 10 feet on the side yard setback and 25 feet on the rear yard setback; the second choice showed 12 feet on the side yard setback and 30 feet on the rear yard setback. The applicant noted that he is willing to move the side yard setback to 12 feet, but prefers the 25 foot rear yard setback.

Erickson described the history of the area, and described that the setbacks of the other commercial buildings are approximately 30 feet from rear lot lines and 10 foot on side yards. He is not sure when the ordinance changed, but noted that those are the setbacks he was familiar with. He also described that this building would be heated storage for his commercial properties. The other buildings on-site are air conditioned and have slight noise, but there has never been a complaint from a neighbor. They are separated by 300 feet to the closest residential home.

Henderson confirmed that the request requires a variance from the rear and side yard setbacks. McGuire Brigl stated that was correct. Erickson stated he is requesting 12 feet on the side and 25 on the rear.

Beckstrom asked about the hard coverage requirement in the commercial district. McGuire Brigl stated that there is a maximum hard coverage of 50% in the commercial district, including blacktop and buildings. McGuire Brigl stated that the calculation is close, but with the 12 foot side yard setback and 25 foot rear yard setback, it should be just under 50%, and that she is willing to work with the applicant during the building plan review to ensure it meets the requirements. Erickson stated that Braun said the site plan was fine. Erickson also noted that he had no reason not to trust Jim, and that he has worked with him in the past and had no issues. He stated that he has been delayed in this process, and that he dropped off site plans in June. He said that this has fallen apart.

Henderson stated that the Planning Commission thinks highly of Erickson and that he has been a good business partner and brought a lot to the community. Beckstrom stated that if there is no more discussion, he will open the public hearing. Beckstrom opened the public hearing.

Beckstrom asked if there was anyone wishing to comment. Seeing no one, Beckstrom closed the public hearing.

Henderson motioned to approve the 25 foot rear yard setback. Carpenter seconded. There was no discussion and the motion carried unanimously. Henderson motioned to approve the 12 foot side yard setback. Carpenter seconded. There was no discussion and the motion carried unanimously

Variance for Samir Salama - Required Frontage on the Public Road:

McGuire Brigl described the request. Salama was granted an Interim Use Permit (IUP) for a commercial kennel on a residential lot. McGuire Brigl described that this does not necessarily grant him a building permit.

Salama stated that the building permit was verbally approved with the IUP, and that he went out with the Town Board and measured and saw there was enough space to put the road in provided that a bond or letter of credit 1.25x the amount of road was given to the Township. He noted that the road must be completed within 2 years. Balfany asked who "we" was, she stated that she did not go. Salama stated that it was Dave Henderson, Jan Palmer, Bob Hanson, Alex Haine, and another board member. Balfany asked if the Town received the letter of credit or bond; Salama says no they have not done it.

Salama said that he was granted the IUP and that the kennel and the home are one unit. He said that he got the survey and that the requirements were met for setbacks, that everything was ready, and that the building has been delayed, which has increased costs.

Henderson stated that he was at the meeting on-site. He said that Jan Palmer and Jim Braun were talking it through and that they said they should move ahead with everything and get it done. Mike Nimzo said that he is going to build a nice home for Salama. Henderson stated that the two supervisors on-site led Salama to believe he was good to go ahead without full board approval. Beckstrom stated that the IUP was granted and stated the road had to be completed, and that there was nothing about the building permit in the approvals.

Henderson stated that Salama was told that he cannot build the township road but if he puts the money down to build the road, when the next owner moves in they can build the road once they get the approvals. The property next to Salama's property is currently in foreclosure and without all property owner's approvals, there is no way to dedicate the private road to a township road. Beckstrom stated that this was based on the assumption that the next person would want it to be a township road.

Salama stated that everyone went out and measured, and that no one said it might not work. Beckstrom stated that his concern is that there needs to be frontage to build a home.

Beckstrom stated that the IUP was granted with the assumption to build the road and dedicate it but there is no guarantee here that in the event that it did not happen, that the bond would be able to get used. Beckstrom stated that he was concerned about the liability from the township moving forward if it is not a township road.

Salama stated that Lyle told him that he would be in violation if he did not put it in within two years, and if he did not, then he would be in violation.

Beckstrom stated that in theory, if someone bought it and they did not want the road, then what would happen? Beckstrom stated that that point, it is out of their control and they may not agree.

Carpenter asked if the road could just be built. Henderson stated that at the time of the IUP approval, the home was owned by another owner. Hanson stated that he did not think that was correct, that it had been vacant a lot long. Henderson stated that online it shows 6 months before August 2nd, that is when they foreclosed on it. Salama stated all they knew there were issues with it.

Salama stated that he has put \$20,000 into the property based on the recommendation of the committee. Beckstrom stated that he understands the hardship that he has gone through, and that the Planning Commission does not want to see anyone have to deal with this. Beckstrom stated that they are compassionate but that they have to make decisions that are in the best interest of the Township.

Carpenter asked what the issue is. Beckstrom stated that the issue is it needs to be a public road, and that it needs to be deeded over to the Township. Hanson stated that they had talked about a certain width and now because of the ordinance, it will be right up the historic property. Hanson stated that because of an absentee neighbor, it is more complicated. Carpenter asked if it could be 28 feet in width, to Township standards, and potentially curve around the potato cellar. McGuire Brigl stated she does not see why not; if someone could design the road that way, yes it could.

Beckstrom opened the public hearing. Hanson stated that Samir has spent a lot of money improving the driveway and that the part that was not improved has suffered a lot of consequences during the improvements. His driveway is rougher now than it has been in 20 years, and it is hard to get heavy equipment down and because of it, there is a lot of damage. There has been the grinding of trees and it is messy and in transition because somebody dropped the ball. He said that they all went and it looked good, but at the time, they did not know where the property line was. That caused a curveball which is causing debate. Hanson stated that they knew the house was vacant and foreclosed and they knew what they were going into. Hanson stated it is frustrating for them as well, because now it is a wait-and-see situation. Hanson stated that he does not know what condition his driveway of 20 years will be in.

Beckstrom asked Hanson if he has talked to Salama. Hanson said no, this is the first time he has seen him. Hanson stated that the project should be moving underway. Henderson asked Hanson if he is for or against this proposal. Hanson said that he is for it. Hanson said that it helps him, he has had a fire on this property and it is not easy for emergency vehicles to get there. He stated that his father is living with him, and they have had an ambulance there, and it is rough. A township road would be nice and it is frustrating to see what is going to happen.

Haine commented that she is definitely for it, and that she has welcomed Salama here, and that Hanson has put a lot of time and effort into maintaining this throughout previous years. Haine stated that the road easement is close to her property line, and she is concerned about her historic potato cellar. She stated that if something went wrong, they could lose a 100 year old building. The cellar is hollow underneath, which means if you cleared trees in front of it and plowed snow, you would throw it right on top of the cellar. This could collapse it.

Beckstrom stated that the 66 foot easement is in place so that the Township has the area to throw snow as it plows. Haine stated that it could ruin the building. Haine stated that she thought there was an understanding in place, and that neighbors stood around and shook hands.

Carpenter asked what her understanding was. Haine said that her real estate agent in February said she had 13.75 acres, but it did not line up with the property lines or the roads. When they redid the survey, it moved her property line. 8 months ago, she had a lot more area on the north side of her property; now, she is closer and the property line does not follow the road. Haine stated that the aerial photo shows thick coverage of lilac bushes and trees on the north end, and when they stood there and measured 20 feet, it did not effect the trees or the potato cellar. She is fine with shaving them down but does not want the road up to the cellar.

Beckstrom asked who owns the south property. Haine owns the pasture and Henderson owns a portion, too. Beckstrom asked if there a possibility of turning easement south through the field. Haine said no, her pasture is there and barn there. Carpenter asked that if the easement is 66 feet couldn't they build a 28 foot road. He asked what the issue with that is. McGuire Brigl stated that it would be a private road and needs to be a public road.

Hanson asked if the potato cellar is 33 feet from the easement, and stated that even if you run the road down the middle, you are a considerable distance from the road. Henderson stated that she would lose 3 or 4 feet of trees. Hanson stated that he does not think they could throw snow 25 feet. Haine said she is fine with losing trees.

Beckstrom closed public hearing. Beckstrom stated that because of unknowns, he thinks they should everything past the township attorney and see if there's something they are not considering. He said if they have liability because the ordinance requires public frontage, he wants to know. He asked what everyone thought.

McGuire Brigl agreed. Beckstrom stated that there are a few lots with only 60 feet of frontage and they cannot build because of it and that anyone could come in and then the ordinance

might not mean anything. Carpenter stated that the public road vs private road seems like a bigger issue. Henderson stated that it seems late to bring in the township attorney and engineer.

Beckstrom stated that this is the first meeting where I have heard the issues and the public has had opportunity. Henderson stated that they should have been here tonight. Beckstrom stated that if there is no legal right to do it then that would be an issue, but whatever they do he wants to make sure the Town follows the law.

Beckstrom stated that his recommendation is that we keep the public meeting open and talk to the township attorney. Mike Nimzo from Riverrock Construction stated that the request is allowed by the zoning ordinance and is cohesion with the comprehensive plan, and that the IUP says that.

Henderson and McGuire Brigl went through the criteria points for a variance, including practical difficulties, the need for the use to be reasonable, for the request to not be of just economic considerations, and for the situation to be unique to the property owner.

Balfany stated that she sides with Beckstrom that they need legal advice before they move forward. McGuire Brigl asked what the preference is for the next meeting. Balfany stated that she hates to see this get delayed further.

Nimzo asked at what point is there going to be a call. Beckstrom stated that there will be a call to the lawyer by next week and that no one wants to stop or delay what Salama is trying to do, and that he has been perfect so it is unfortunate but there is a sticky situation and they need to make sure they are not doing anything outside of what they are legally entitled to do. Beckstrom stated that the attorney may have some ideas and that we want to ask what our options are.

Anderson stated the Town needs to cover all our bases. Salama stated that he wants to believe the Township is trying to help him, but that if they wanted legal advice, they should have had it before now. Beckstrom stated that the public had an opportunity now to comment and had not previously; things had to happen in a certain order and we need to be able to provide the attorney with all the information possible.

Salama asked if it is fair that the Town has an attorney and he does not. Beckstrom stated that this is not litigation, they just want to make sure that they are doing what is within their authority and at the end of the day it is the Board's decision.

Salama stated that the Township is leaving him no choice but to get an attorney. Beckstrom stated that he thinks that would be premature. If the board votes against it, then would be the time to consider that action, but the Planning Commission is just trying to get all the possible information. Salama asked if the board is going to vote on this again. Beckstrom described that there are two separate approvals, his interim use permit for a commercial kennel was approved, but that in order to get a building permit to build a house, because he cannot comply with the ordinance, he needs a variance from the Town Board.

Salama stated that his building permit was approved. Beckstrom said no, it was not. Salama stated that he has been messed with. Nimzo stated that this is repetitive and that he needs answers. Salama stated that if the board feels they have made the incorrect decision that they should tell him. Beckstrom stated that a building permit cannot be given to you without building plans, and that Salama was not given a permit.

Nimzo asked why the Town Board would grant an interim use permit for something imaginary -- the groundwork has been laid to pull the permit. Beckstrom stated that no one is against what Salama wants to do, building a home is a reasonable use. Balfany stated that if they allow a home without a public road, then they will have people breaking down the door for similar variances, and they have to make sure they cover themselves. Beckstrom stated that they will go to the attorney. Nimzo asked for a deadline.

McGuire Brigl stated that legally the Town has up to 120 days to respond to the request, with a 60 day extension after the first 60 days. Beckstrom stated that the next meeting will be October 19, 2017 and that the Planning Commission is a recommending body and the Planning Commission recommends approval or denial and they will review on the 6th or they can take action or defer it again. Beckstrom stated that he assumes something would happen on November 6th, but they have the option of extending it if need-be.

Carpenter asked if he could have whatever the Township Attorney recommends by the next Planning Commission meeting. Carpenter stated that the Attorney may suggest getting signatures from neighbors, or something like that, which would be nice to have at the next meeting. McGuire Brigl said yes, she will try to have it.

Beckstrom stated that he is sorry that Salama has to go through this; and that it took him 3 years to work with the County to get stuff done so he apologizes. He stated that he thinks they are getting close to the end of it, and hopefully there will be an answer soon.

The board motioned unanimously to table this until the next meeting.

6. *Old Business:* McGuire Brigl asked about cleanups that keep coming up. The Planning Commission mentioned Athens Mini Storage, there are campers and boats, and they are not sure if this is an approved use.

Henderson asked about the public frontage code changes. Carpenter stated that he thought they were doing 150 feet to 250 feet, but the minutes say 200 feet. Henderson stated that they considered 200 feet, but that the County regulations are 150 feet. Beckstrom asked about the Planning Commission's ability to set the agenda. Henderson stated that they can only talk about things in the paper. Henderson made a motion to make the frontage requirement consistent to be 150 feet. Anderson seconded. Motion carried unanimously to update Section 20-32 (t) 1 (4) to change the requirement for frontage on a public road from 200 feet to 150 feet.

Henderson mentioned that there is a moratorium on asphalt plants, and that they need to study it at some point. Beckstrom stated that he does not believe the Planning Commission should work on it until next summer, because the moratorium covers the Township for a year. Henderson asked why they should not start on it right away, so they can have it finished and put it in their back pockets and approve it once they think it has worked. Henderson said that they could meet and come up with requirements and then wait until they have a public meeting and board meeting and get it approved.

Beckstrom stated that there was an expenditure passed by the Town for everyone on the Planning Commission to get some training and they should schedule it. Likely it will be a Saturday. Steve Gritman is willing to teach it, for far less than for Carolyn. Beckstrom said that he will send out emails to coordinate and they can get it scheduled.

7. *New Business:* Anderson asked if the Town can get nice address signs for each property. She noted a few other Towns with similar signs, and it makes it very easy to spot addresses. It could be nice for emergency services. Balfany stated that other Towns paid for them, they are blue and very nice. Oxford has them, and they have been very successful.
8. *August Permit List:* McGuire Brigl described the permit list.
9. *Adjournment:* Balfany motioned to approve. Henderson seconded. Meeting adjourned.

Minutes approved on this 19th day of October 2017.

Chloe McGuire Brigl, Zoning Administrator

Dave Beckstrom, Planning Chair