

MINUTES OF THE MEETING

Athens Board of Zoning Appeals

October 23, 2024

1:00 PM

City Council Chambers

ROLL CALL

MEMBERS PRESENT

John Proffitt
Mayor Steve Sherlin
Chairperson Wesley Kite
Vice-Chair Sam Stephens

MEMBERS ABSENT

Kenny Charles

OTHERS ATTENDING

Anthony Casteel
Gene McConkey
Nora Cardin
Brandon Ainsworth
Hector Jaramillo
Trent Smith
Petergaye Taylor
Alex Seidov

Approval of Minutes

Approval of the September 18, 2024, Regular Meeting minutes

The minutes of the September 18, 2024, regular meeting was approved on motion by Mayor Sherlin; seconded by Sam Stephens; vote – unanimous.

Old Business

There was no old business to discuss.

New Business

1. **Use on Review** request by Hector and Heather Jaramillo for a Preliminary Approval of a Residential Planned Unit Development on the 22.56-acre city portion of Tax Map 065 Parcel 094 located on Cedar Springs Road and Keith Lane zoned R-2 Medium Density Residential District.

Chairman Kite swore in those who would be speaking at the meeting.

Chairman Kite said he had seven things on the agenda:

- 1) Use On Review
- 2) Front Setbacks
- 3) Density Calculation Elimination Request
- 4) Side Setback
- 5) Rear Setback
- 6) Minimum Lot Size
- 7) Maximum Height

Chairperson Kite said the first thing they will talk about is Use on Review, vote on that, and then go from there. He read what the Municipal Code said for a PUD (Planned Unit Development). "The intent being to encourage or provide for planned development that is compatible with the nature of the district; yet offers an environment which is not typical of these districts." He said there are several things listed in Section C & D, that are specifically for the BZA. He asked what their comment was to statement they just read. He thinks the approval or denial will be based on that. It says it must be compatible with the nature of the district, but it gives other reasons like it can also offer environments and things that might not be typical of the district.

Mr. Seidov passed out an information packet.

Mr. Seidov said the intent behind what they are trying to do is how do they achieve that by bringing a subdivision to the city that also allows some amenities and the look of it to be where the city wants to go and to build a subdivision on some things that have already been done and do it better. To do that, the subdivision regulations currently have restrictions are essentially density. They found that for them to responsibly build a subdivision it gives a bit more oversight by the BZA, the Planning Commission and City Council, to look to see how they are going to design the subdivision. On their plan they have pavilion and some amenities. He talked about one of the documents he brought from McMinn County that says housing is needed. One of the other documents is from the Association of Homebuilders said more than half of Americans, can not afford a house. He discussed affordable housing. What they are asking is to give enough houses people can afford and to put the infrastructure in that they don't have to increase the lot cost. A study that was done in March 2024, says 77% of US households cannot afford a house. He talked about housing prices and who can or cannot afford it.

Chairman Kite said the Use on Review is approving the use that he requested that the city allows, completely independent on the cost of the house and completely independent from what people make in the state of Tennessee. He said the code specifically says, "The intent being to encourage or provide for planned development that is compatible with the nature of the district; yet offers an environment which is not typical of these districts." If they spoke directly to what is this subdivision offering that will special to

this district. It may not be typical but it offers something that the residents want specifically.

Mr. Smith said what they've created here is residential development, there's no commercial or industrial, but it's all leaning into a community. There are common areas that will bring that little community together. It's a little different from the surrounding neighborhoods, pickleball court, picnic area and so on. This is a community where they all might come together with some of these amenities.

Chairperson Kite asked if he was wrong, but the medium density for R-2 with the green spaces they drew, did not increase the density at all. The density is still under the minimum of what is required under an R-2. He asked if that is correct.

Mr. Smith said they took the size of the whole developing area and divided it by 5-units per acre and came up with this quantity of units. Maybe a couple of discussions later, they are going to talk about what they are allowed to use versus what they are not being allowed to.

Mr. Casteel said even if the Board decides not to let them use the right-of-way requirement, the maximum density on this property is still going to be based on 22.56 acres. It is five an acre and he thinks it comes out to 112. They cannot exceed that because it is against the law to give further density. It is state law, you cannot vary density.

Chairperson Kite said they will get to that but for now, they will focus on the Use on Review.

Mr. Proffitt said Chairperson Kite may get the crux of what they are talking about with encouraged planned development compatible with the nature of the district. He asked Mr. Seidov to go back and address the nature of this project and how it is compatible with the district again.

Mr. Seidov said in the district right now, there are residential homes. The one big difference is to create a community and bring the amenities that will attract the people that are living in the community. They found folks in this community, they are working and wanting to get home, they don't want to do work, they want to walk around. The walkability is there. Secondly, they want to take their kids to do an activity. That activity is a playground. In addition to that, they added a reading library, a place for them to just sit and read, and a sharing library for it to be a community feel. If folks want to create a book club in the community or HOA, they can talk about it. The craze right now is pickleball and a lot of friendships can be made on the court. Facilities are being put up all-over America that are charging an arm and a leg. All those amenities in one neighborhood don't exist; that is how you differentiate this project.

Mayor Sherlin said he is having a problem of how it is compatible with the district, because it is a PUD and what they are proposing, there is nothing like that in that district. They are basically proposing to put in that area of the city row housing. He said although he knows there is space between them, you go to places like Baltimore, New York, or Chicago, that is basically what you get. You can reach out your window and knock on your neighbor's window. He knows there are five or seven- and one-half feet between them. In that area has been zoned R-2 and all that area is area where single houses are sitting on a lot of two or three acres of land, all the way through there. In his opinion, a PUD is not compatible to this area. It would decrease the housing value in the area. It would create a lot of traffic in that area. There are a lot of problems associated with it. He knows Staff has recommended parts of this and has recommended to deny certain parts of this. Public Works has problems with parts of this. He said they would have to convince him how this is going to be compatible with the nature of the district out there without taking away from the aesthetics out there, what the community wants in this area, what is desired in this area. He does not believe the community is positive to that project.

Chairperson Kite said back to the density, this is zoned for R-2. They are allowed to have a certain density based on what the code and the law says. They are bound by the law and they are requesting no more than what is allowed in the R-2. He asked if that was correct.

Mr. Casteel said correct.

Chairperson Kite said the density they are requesting is lower than what is already allowed in that district. In other words, the number of homes they are going to put in there is less than what they could put if they had single-family dwellings. He asked if that was correct.

Mr. Seidov said correct. That will take them to the next point. They have 22.56 acres. The R-2 zoning allows 112 homes to be constructed.

Mr. Casteel said it will allow 122; 22.56 acres x 43,560 square feet, generates 982,713.6 square feet and you divide that by the minimum lot size in an R-2 of 8,000 square feet for a single-family home, you get 122.8892, which would be the maximum density of homes for that acreage in an R-2.

Chairperson Kite said you can have 122 homes in an R-2 correct.

Mr. Casteel said yes.

Chairperson Kite said their drawing was for 90 homes.

Mr. Seidov said their drawing shows 112.

Chairperson Kite said what was submitted to them, was 90 lots.

Mr. Casteel said that is what was submitted with the application. He said the plans that was submitted with the email, had 90 lots and he showed a copy of the email to Mr. Seidov. Mr. Casteel said 22.56 acres minus 4.7 acres of proposed right of way.

Mr. Seidov said it was right there on there.

Mr. Casteel said they have to take out the roads per the code.

Mr. Seidov said that was the topic he was hoping to broach.

Chairperson Kite said if they did 112, which they are saying is what's on the map. That is under what is allowed in an R-2. So, if they abandon this and do single family homes with no green spaces, no pickleball courts, no amenities, they would be allowed to build more houses on this lot, which would be more compatible with the residential district. But they are not doing that, they are building less houses, with more green spaces.

Mr. Seidov yes. From reading the growth plan and reading the single-family housing density study and the density requirement, understanding the affordability requirement and what they people actually want, how do they entice them to come into a community. If he builds 122 homes and they are going to be the same with just a road here and a road there, they are not going to come. They may come, but it is going to be a lot slower. How do they entice that buyer to come to a community they like. That is dual play in this development where they can give some. That is where this give and take is with the BZA. There are certain things they have to meet, certain things have to do, and they are now able to give amenities. He will have that space to give those amenities to. If not, then those amenities won't exist, and they think that would be to the detriment to the community.

Mr. Proffitt asked if these homes were going to be very similar.

Mr. Seidov read a study about what buyers really want. He said they are designing here that they are building upon is what has already been built here.

Chairperson Kite said in 2021, a Use on Review was granted for this property for patio homes that is attached to the property from 2021. How does that differ from a second Use On Review that will also be attached to the property. He asked if they remembered the density that was approved on the other Use on Review.

Mr. Casteel said it is the same density. He has different design standards and at the time they did not change the zoning code. They granted him a variance on the zero/twenty foot setback requirements. They allowed them to have the 5 /15 setbacks that are currently in our code now.

Chairperson Kite said that density was the same. This density is no greater than what has already been approved.

Mr. Casteel said, if the land would have held it, the design of the roads, the access, and the storm water, if you can max out 122, he could have done 122 patio homes, in R-2, and could do 97 on this PUD based on the subtraction of 4.7 acres from the 22.56.

Chairperson Kite said that is how he interpreted it also.

Mr. Seidov said they are making it harder on themselves to bring what they think is a better product for the constituents of the city. That belief is set in studies they have done that are back by the National Association of Homeowners, so it is not just him coming up with this. They are seeing over and over again what people are asking for.

Chairperson Kite said when he thinks of a neighborhood, he thinks all are one house with garage like you find in R1 or RE. However, that is not even the zoning they are talking about; they are talking about R-2 which has a certain density. These plans are well under the density; they are not even building anymore homes. Initially, it does seem counter to the area, but at the same time he recognizes this is the direction the country is moving in. People want smaller yards, they don't want to mow, so he does recognize this is the kind of places people want to buy. Being compatible is not the only requirement. The second requirement says that, as long as it offers an environment that may not be typical of the district but still offers some things, that is where he is sitting right now. They are offering more than the district has. The density is less than the district. If they went strictly on the district, they would be allowed to build even more houses, which they said, that is not what they are going to do. They are offering things in the environment, which are not in the district, which is exactly what the city code says. He asked the board what their thoughts were on it.

Mr. Stephens said he is involved with a lot of them, and he has intimately seen a lot of those folks moving into those homes. They offer more than what the surrounding area at the time it was built. The folks at that point did not have the desire for a more refined subdivision. As they are becoming more refined, that is becoming more of a want for folks. Whether they like it or not, it is the future. He sees it a lot and thinks it would offer more than what they have in that area.

Chairperson Kite said he was going to go on whim and say there are a lot of people who may say this is counter to this district but none of those people are here today. They posted this meeting to the public and no one showed up.

Mr. Casteel said it was advertised at the first of the year and it is posted on the website.

Mr. Proffitt said he was concerned about how this fits in. Here they have a fair amount of development property. What will differentiate these homes, will they also not be similar to the R-2's that were hard to sell?

Mr. Seidov said in R-2, the homes they are going to build are going to be similar. What will not be similar is that he is going to provide buyers with things that they want, and he is not going to give them amenities they desire. He is going to tell the market what it is going to take, rather than listening to the market for what it thinks. They are asking for the setbacks that will give them width that will allow the two-car garage that people are asking for. They are asking for amenities that were mentioned. They are really asking for more, but they do not want to pay the HOA fee.

Mr. Proffitt asked if he said he was thinking about adding space here that would allow for a two-car garage.

Mr. Seidov said yes, the home will have a garage.

Mr. Proffitt asked if Pickleball was going to be just one court. He said it will be too popular; they will never get on the court.

Mr. Seidov said yes. He said depending on if everything goes well here, they could discuss maybe putting another one there. They would definitely have to shift some things around, potentially the playground area. He said he knows they would not be able to fit it on the other side.

Mr. Smith said he was bottle-necked on that. Until they do real design on the detention ponds, they do not know how much room they have to add another court. If they are lucky and the counts work out, and they are small, they may have room to add another one.

Chairperson Kite said is not going to be less that it is now.

Mr. Smith said correct.

Mayor Sherlin asked if all the houses were going to look alike.

Mr. Seidov said no.

Chairperson Kite asked how many different housing plans they had.

Mr. Seidov said typically in a subdivision like that, they have five to eight different front elevations on the street. On that one street you don't want all the houses to look the same. There will be different elevations and different colors.

Mayor Sherlin asked if they were doing the construction of the homes.

Mr. Seidov said yes.

Mayor Sherlin asked if they were going to throw up ninety homes in that area.

Mr. Seidov said one hundred twelve.

Mayor Sherlin asked if their company was going to build those homes.

Mr. Seidov said right now they are planning on building those homes.

Mayor Sherlin asked what the name of the company was.

Mr. Seidov said HBG. He is a developer and while they are going through this, they are working with the National Home Builders Association. What they can build, what the saturation is, and how many homes their company actually can do horizontally, they don't have the number right now.

Mr. Proffitt asked if they were going to have the site prepared for construction.

Mr. Seidov said the entire site. The amenities, the roads, the initial sidewalk coming in, the pavilion, the pickleball court, and the fence will all be built. Once 80% is built out, they will put a topping on it.

Mr. Proffitt asked once the site is prepped and ready to build on, is one of the options to sell it to someone else who wants to build those homes.

Mr. Seidov said absolutely.

Mayor Sherlin said that was his question, if they were going to build the homes, or if someone else was going to build them.

Mr. Seidov said they will build some of the 112 homes. They do not know exactly how many. There is a cost associated with it based upon construction drawings that are going to come out. If they go high, they do not want to carry the cost of all those lots and not have a 12% increase on development costs, they will go belly up. You have to sell some of the lots to bring money back in.

Chairperson Kite said even though code has been met on the homes built in town recently, we want to make sure there's no shoddy homes. That might expand on what he is trying to get out.

Mr. Seidov said they are also looking at other sites. Their intent is to stay in Athens, TN. He has talked to the city staff and AUB. They are listening to the city to see what they want.

Chairperson Kite said they just don't want to get down the road and be responsible for a subdivision that is less than it should not be.

Mr. Seidov said they want to make sure that they are responsible for all those things, landscaping. Looking at it, it feels right.

Mr. Proffitt said having sat in the mayor's seat before and looking at the return on residential properties in the city, it's a loser as far as what it costs to provide services versus what taxes it brings in. There is probably not a real net benefit to the citizens, and to the city's budget. It's a net benefit to builder or he would not do it. He said the more homes there are, the more pressure it is on the public services.

Mr. Seidov said they already have the use on review that is connected to this property.

Mr. Casteel said yes.

Chairperson Kite said that does not change. The municipal code that is before them is what they make their decisions upon. He asked Mr. Casteel if the name of the builder or the thought of who the possible builder could be in the future, be a legal basis to make a decision for a Use on Review, because he does not want shoddy construction in Athens either. Those safeguards are already in place down the line. Those safeguards are not gate-kept in place by the BZA. Their decision is just on the use. It has no effect on the builder, or color shirt he wears, those safeguards are kept in place with codes enforcement, fire department, public works, utilities, the safety of the gas lines etc. That has nothing to do with the decision of the Board of Zoning appeals. He asked Mr. Casteel if that was correct.

Mr. Casteel said yes that is correct.

Chairperson Kite said as much as it concerns him, shoddy construction is a concern all over the country. He does not see how the fear of that affects their approval of the use.

Mr. Proffitt said it is in the back of their minds, but totally outside their scope.

Chairperson Kite said it is totally in the back of his mind, and he is just going completely objective on what these gentlemen have projected and presented, what the code allows, and he is bound by the code, based on that...

Mayor Sherlin said he was just asking a question.

Chairperson Kite said the State of Tennessee says all land must be usable. Municipalities according to his knowledge are to do what they can to make effective use of a person's property.

Mr. Seidov said when they are asking for a PUD, it is a give and take for the developer. They are trying to design something that is not going to under mind subdivision ordinances or regulations and do things they are doing. If they went from 112 to 60 lots, what would happen is they would have half the tax base to pay for the same amount of

infrastructure that he as a developer would turn over to the town, that the town would have to take ownership up and maintain maintenance, utilities, water, sewer, and electric department, it is the same amount of lines. If the sewer lines run parallel to here, and he puts in a fifty-foot lot or one-hundred-foot lot, the house that is going to be sold in the City of Athens, would yield a certain amount of money. He can only sell that lot for a certain amount. If it was on fifty-foot-lot or a sixty-five-foot-lot, the revenue that is generated on a thinner tax base, would you get more revenue on a thinner piece of land?

Mr. Proffitt asked Mr. Casteel what the average daily trips were for a home built.

Mr. Casteel said the last time he looked at a trip generation, it has probably been over ten years, and he is not sure how the trends have changed over time, but ten years ago, it was eight trips a day.

Mr. Proffitt said eight trips per day, per home. So, if you had half that many, half as many trips, half as much wear on the streets, more longevity, police calls, fire calls, sanitation, there are some other mitigating factors that happen when you have more houses, more people, more pressures on that property, but he does understand what he is saying, it will be more revenue and more costs associated with it also.

Mr. Seidov they are going to get some people from the City of Athens, the county area, but they will also bring folks in. He said the majority of the tax base is from sales revenue of business. Bringing people that can afford a \$400,000.00 or a half million-dollar home will then cause people to spend money in the City of Athens because most people spend money within a ten-mile radius of their home. They are increasing the population.

Mr. Proffitt said if he figured it correctly, it would be over 700 trips per day. These empty on to Keith Lane and Cedar Springs?

Mr. Casteel said yes, there are two ways in and out, but Keith Lane is substandard, but they can talk about that later under the subdivision regulations requirements.

Mr. Proffitt asked if that was considered in that Use on Review.

Chairperson Kite said that was talked about, the roads.

Mr. Casteel reminded them that this was a Use on Review. They went more in depth where they are going to be able to vary some of the stuff in the code for the PUD. As far as the design of the subdivision that lies with the Planning Commission, they have absolute power over that. That is where the upgraded roads and transportation needs will be addressed.

Chairperson Kite said this is a preliminary approval and then they will go to them and do all the redesign and come back. He thinks a lot of it goes back to zoning. It is zoned R-2 which allows certain things and density. The citizens and municipal leaders have the

authority to change that zoning at any time, and they have not done so and that tells him that they are OK with that being R-2 and everything that comes with it. He asked if there were any thoughts about that.

There was more discussion and then a motion was made.

MOTION: To approve the Use on Review request as stated.

MADE: Sam Stephens

SECOND: Chairperson Kite

VOTE: Tie Vote - (Stephens/Kite for) and (Proffitt/Sherlin against)

MOTION FAILED

The meeting was adjourned at 2:10 PM


John Proffitt, Secretary