

1 CITY OF EAST POINT
2 PLANNING & ZONING COMMISSION

3 January 17, 2013 - 7:00 P.M.
4 Official Meeting Minutes

5 Jefferson Station
6 1526 East Forrest Avenue
7 4th Floor Conference Room
8 East Point, Georgia 30344

9 Board Members:

10 Commissioner Shean **ATKINS**, Chair - Absent

11 Commissioner Linda **SHELDON**, Co-Chair

12 Commissioner Joel **TUCKER**, Provisional Chair

13 Commissioner Dr. Lydia **WARES**

14 Commissioner Gregory **FANN** - Absent

15 Commissioner Matthew **MALLORY** - Absent

16 Commissioner William **BRYANT**

17 Commissioner Davita **WASHINGTON**

18 Commissioner Karen **RENÉ**

19 Also Present:

20 Ms. Linda **DUNLAVY**
21 City Attorney

22 Ms. Regina **CARTER**
23 Senior Planner

24 Ms. Keyetta **HOLMES**
25 Senior Planner

James **HAMMOND**
Videographer - Absent

Richard **RANDOLPH**
City Engineer - Absent

APPEARANCES

Reported By:
Jeanene Harper
(404) 228-8807 Office

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPLICANT(S):
Leslie Zinn
2012PSV-001-12

Page
7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Index

Description	Page
I. Call to Order	4
II. Roll Call	4
III. Moment of Silence	5
IV. Pledge of Allegiance	5
V. Adoption of Agenda	6
VI. Approval of Meeting Minutes 11/15/2012	6
VII. New Business	6
VIII. Announcements	32
IX. Adjournment	32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I. CALL TO ORDER:

COMMISSIONER ATKINS:

Good evening. I'm Shean Atkins, Chair of the East Point Planning & Zoning Commission and tonight is our regularly scheduled meeting for January 17th, 2013. At this time, I'd like to call the meeting to order and ask for a Roll Call, please. Staff.

II. ROLL CALL:

MS. HOLMES: Commissioner Rene

COMMISSIONER RENÉ: (No response.)

MS. HOLMES: Wares

COMMISSIONER WARES: Present.

MS. HOLMES: Commissioner Tucker.

COMMISSIONER TUCKER: Here.

MS. HOLMES: Commissioner Fann.

COMMISSIONER FANN: (No response.)

MS. HOLMES: Commissioner Atkins.

COMMISSIONER ATKINS: Present.

MS. HOLMES: Commissioner Mallory.

COMMISSIONER MALLORY: (No response.)

MS. HOLMES: Commissioner Sheldon.

COMMISSIONER SHELDON: Here.

MS. HOLMES: Commissioner Bryant.

COMMISSIONER BRYANT: Present.

MS. HOLMES: Commissioner Washington.

COMMISSIONER WASHINGTON: Present.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. HOLMES: Mr. Chair, you have a quorum.

COMMISSIONER ATKINS: Okay. Thank you. In lieu of the prayer, this Body recognizes a Moment of Silence so at this time, I'd like for everyone to take a Moment of Silence.

III. **MOMENT OF SILENCE:**

COMMISSIONER ATKINS: Thank you. If everyone would please stand and join me in the Pledge of Allegiance.

IV. **PLEDGE OF ALLEGIANCE:**

COMMISSIONER ATKINS: I'd also like to say that we've been joined by Commissioner René to my far right. Good evening Commissioner Rene.

COMMISSIONER RENÉ: Good evening.

COMMISSIONER ATKINS: Okay. At this time, Commissioners, I'll entertain a motion to adopt our agenda.

V. **ADOPTION OF AGENDA:**

COMMISSIONER WARES: So move.

COMMISSIONER ATKINS: It's been moved by Commissioner Wares -- Dr. Wares. Is there a second?

COMMISSIONER SHELDON: Second.

COMMISSIONER ATKINS: It's been seconded by Commissioner Sheldon. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

We will adopt the agenda as presented this evening. Our next Agenda Item is the approval of our November 15th, 2012 meeting minutes. Commissioners, at this time, I will entertain a motion to approve our meeting minutes from our November meeting.

VI. APPROVAL OF NOVEMBER 15, 2012 MEETING

MINUTES:

COMMISSIONER TUCKER: Motion to approve.

VIDEOGRAPHER: Microphone, please.

COMMISSIONER TUCKER: Sir?

VIDEOGRAPHER: Microphone, please.

COMMISSIONER TUCKER: Motion to approve the minutes of November 15TH, 2012.

COMMISSIONER ATKINS: Is there a second.

COMMISSIONER WARES: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Tucker, seconded by Dr. Wares that we approve our November 15th, 2012, meeting minutes. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All of posed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it.

Our next Agenda Item is New Business.

VII. NEW BUSINESS:

COMMISSIONER ATKINS: It's Case Number 2012 P as in Paul, S as in Sam, V as in Victor dash 001-12. The applicant is Leslie

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Zinn. Location is 3113 Main Street. This particular application is for a second variance to fence permit denial. Staff at this time, if you would please sound this Agenda Item and also I think we must open a public hearing for this. So Commissioners, at this time, for this second variance to the fence permit, I'll entertain a motion to open a public hearing.

COMMISSIONER SHELDON: So moved.

COMMISSIONER ATKINS: Is there is second?

COMMISSIONER BRYANT: Second.

COMMISSIONER ATKINS: It's been moved by Commissioner Sheldon and seconded by by Commissioner Bryant that we open a public hearing. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All of opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it. The public hearing is now open and I'd like to ask the applicant if she would please approach the podium. State your first and last name and your current address.

(Whereupon Applicant Leslie Zinn approach the podium.)

APPLICANT LESLIE ZINN: Hi. Good evening. My name is Leslie Zinn and my address is 2210 Palmer Court, College Park.

COMMISSIONER ATKINS: Okay. Ms. Zinn, at this time, during a public hearing, because this is a second variance for you fence permit denial, you now have the opportunity to present your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

case to the Commissioners.

APPLICANT LESLIE ZINN: Okay. I'm requesting to, in a variance for an eight foot fence to be put behind our building at 3113 Main Street for a couple of reasons. One is I believe that the current zoning for the building should be I-1 not CR based on the litigation that took place just prior to us purchasing that building in 2002. Do you want me to go into all the details?

COMMISSIONER ATKINS: It's your case so...

APPLICANT LESLIE ZINN: Okay. So I forget last week and we'll start over. Okay. So back in two 2001 or rather in 1998, the former owner of this building, George Wilpurs, the lease with BAMA Food had terminated and he was trying to either lease it to another company or sell the building and it was at this time that he found out that the City had changed the zoning for the building from I-1 to CR. He tried for three years to lease or sell it and he was unable to because of the zoning. He applied for two variances, which were denied by the City and so in 2001, he sued the City of East Point for unlawful change of zoning, basically taking the use away from the building. He won the lawsuit. We were under contract for the building at the time and the court ordered that the City of East Point rezone the building in a constitutional manner. The City appealed and to the Supreme Court and they were denied a hearing and so they of course was suppose to rezone it, which I attended the meeting. I believe it was July 5th. I don't have my notice right in front of me, but there was a Council meeting where they discussed

1 the BAMA building rezoning and the Council members said that they
2 were not gonna be told -- the court wasn't going to tell them what to
3 do with their zoning and so they did not rezone it. George Wilbur
4 then file them a motion for contempt and they -- he didn't win
5 contempt but the judge ordered that the City needed to rezone the
6 building within something like two weeks and I attended that Council
7 meeting as well. It was August 5th and our Agenda Item came up
8 around midnight and um, they voted on it and it was voted to be
9 rezoned and we finalized our contract. We purchased the building
10 and we moved in. So when I filed -- when I filed for a permit for this
11 fence, I was completely shocked with the denial when I found out
12 that it was not an I-1 then it was CR with a grandfathered use. So
13 I'm asking for the variance because I believe the correct zoning is
14 I-1, but beyond that, we are an industrial building. Our building is 30
15 feet tall. The fence I'm requesting will not be visible from Main
16 Street in any way. The area behind our building has a lot of crime.
17 Our business is doing very well and we need additional parking. Um,
18 we need parking for our employees and we need to free up the
19 parking in front for our customers. The current situation is
20 dangerous if you come around our building when people are pulling
21 in and out. It's very dangerous so I'm requesting the variance
22 because I believe that that's the appropriate fence that's needed for
23 an industrial building our size. All of our neighborhoods have eight
24 feet fence. Two of them have barb wire at the time. I'm only
25 requesting an eight foot fence. Thanks.

1 COMMISSIONER ATKINS: Okay. Are there any other
2 proponents here tonight to speak to this case?
3 AUDIENCE: (No response.)
4 COMMISSIONER ATKINS: Are there any other proponents
5 here tonight to speak to this case
6 AUDIENCE: (No response.)
7 COMMISSIONER ATKINS: Going once, going twice, seeing
8 none, are there any opponents here tonight to speak to this case?
9 AUDIENCE: (No response.)
10 COMMISSIONER ATKINS: Any opponents?
11 AUDIENCE: (No response.)
12 COMMISSIONER ATKINS: Going once going twice, seeing
13 none, Commissioners, at this time, I'll entertain ea motion to close
14 the public hearing.
15 COMMISSIONER SHELDON: Mr. Chair.
16 COMMISSIONER ATKINS: Yes, Commissioner Sheldon.
17 COMMISSIONER SHELDON: I move we close the public
18 hearing on Case Number 2012PSV-001-12.
19 COMMISSIONER ATKINS: Is there a second?
20 COMMISSIONER WARES: I second.
21 COMMISSIONER ATKINS: It's been moved by Commissioner
22 Sheldon, seconded by Commissioner Wares that we close the public
23 hearing for Case Number 2012 P as in Paul, S as in Sam, V as in
24 Victor dash 001-12. All in favor sound aye.
25 COMMISSIONERS: Aye.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER ATKINS: All opposed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none, the ayes have it.
The public hearing is now closed. Staff, at this time, if you would please present your case.

MS. HOLMES: On October 12th, 2012, an application was submitted to the permits division of the Planning & Zoning Department from the fence workshop. The application requested to install an eight foot chain linked fence at 3113 Main Street to be erected in the rear of the property. The application was denied on the following grounds: In the commercial development zoning classification, fence height can't exceed four feet in our yard areas. The property at that location is currently zoned CR, commercial redevelopment. Chain linked fencing is required to have a vinyl coat overlay. Barb wire is expressly prohibited in the CR zoning classification and razor ribbon is expressly prohibited in this CR classification. To appeal the decision of the Planning & Zoning Department, the applicant and has applied for a secondary variance in orders to 10-2207.

COMMISSIONER ATKINS: Okay. Commissioners, at this time, I just want to State a couple of things and then I'll entertain a motion. So what's before us tonight is we are either going to vote for consensus to affirm the decision made by the Planning and Zoning Director or we are going to reverse the decision made by the Planning and Zoning Director. And I also would like for us to be very

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

clear that before us, we have two issues regarding this matter. The once is the property currently zoned CR and was it zoned CR when Staff denied the application for an eight foot fence? Number two, is an eight foot fence allow in CR zoning? So Commissioners, at this time, I'll entertain a motion.

COMMISSIONER TUCKER: I have a little clarification I need to understand because my understanding --

COMMISSIONER SHELDON: First, you have to have a motion.

COMMISSIONER ATKINS: We need a motion and a second for discussion.

COMMISSIONER SHELDON: Mr. Chair.

COMMISSIONER ATKINS: Yes.

COMMISSIONER SHELDON: I move that we affirm the decision made by the Planning and Zoning Director.

COMMISSIONER ATKINS: Okay. Is there a second?

COMMISSIONER BRYANT: Second.

COMMISSIONER ATKINS: It's been moved and properly seconded that we affirm the decision of the Planning and Zoning Director not to accept the Concept Review Submittal Form of Arden's Garden Incorporated to the permitting division of the Department of Planning and Zoning. And at this time, is there any discussion?

COMMISSIONER TUCKER: I have discussion.

COMMISSIONER ATKINS: Commissioner Tucker.

COMMISSIONER TUCKER: I trying to understand the process because what I have in front of me that I'm reading is a variance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

application and she's seeking a variance for the fence and it's not rezoning.

COMMISSIONER ATKINS: That is correct. This is a second variance to the fence permit. Ms. Zinn in our presentation during the public hearing talked a great deal about the property being improperly or unlawfully rezoned. However, what's before us tonight is a matter of a variance and not a rezoning.

ATTORNEY LINDA DUNLAVY: If I might clarify, Mr. Chair, what I have is something that -- it is a little bit confusing when it's referred to as a secondary variance. What that really means is appealing a decision that has been made by Staff and interpreting the zoning ordinance. That what is secondary variance is. You're not using the same kind of standard that you would use for a variance per se that they're appealing -- Ms. Zinn is appealing the decision of Staff in denying her application for a fence permit and Chairman Atkins is one hundred percent correct that on these kinds appeals the only two issues before this Body -- or, well, the only issue before this Body is whether Staff made an error in some fashion in their decision. Now, Mr. Atkins has broken that down to say, you know, because Staff determined it was zoned CR and that this type of fence, the eight foot fence with the razor wire and the barbwire was not permitted in a CR zoning district. And so in piecing this appeal together, this Body is charged with determining with Staff correct in making that assessment. Is this property zoned CR, which is why I'm sure Ms. Zinn was addressing the question of this zoning on the

1 property and if it is zoned CR, does CR permit an eight foot fence.
2 Those are the kind of braking down the issue you have to decide.
3 COMMISSIONER ATKINS: Okay. Are there any other
4 questions?
5 COMMISSIONER RENÉ: I have --
6 COMMISSIONER ATKINS: Commissioner Rene.
7 COMMISSIONER RENÉ: I have some questions for Ms. Zinn.
8 VIDEOGRAPHER: Microphone, please.
9 COMMISSIONER RENÉ: I have some questions Ms. Zinn.
10 Ms. Zinnin our executive meeting last week --
11 COMMISSIONER ATKINS: Work Session.
12 COMMISSIONER RENÉ: -- Work Session last week, I had
13 asked that -- you said that it was a part of the condition that it be
14 rezoned prior to closing and I had asked you if you had the
15 documentation in your closing. Did you -- were you able to that --
16 APPLICANT LESLIE ZINN: No.
17 COMMISSIONER RENÉ: -- in your closing document?
18 APPLICANT LESLIE ZINN: No.
19 COMMISSIONER RENÉ: Because you stated that it was a
20 condition and I was -- that was the same question that I asked last
21 week that if it was a condition, then it should have been settled and
22 it should have been found in your closing documents that it was
23 rezoned. Everything that I read this far has nothing that stated that
24 it was rezoned. I mean, I did see where they grandfathered you
25 some of the same conditions that BAMA had, but nothing stated in

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

anything that I've read really that it had been rezoned properly.
Have you -- do you have any documentation -- and you stated last week that the owners prior to the selling stated that they thought that it -- I mean, you said -- I'm sorry. You said that you thought that they had mentioned in a legal document that it had been rezoned or it was rezoned prior to them buying that property?

APPLICANT LESLIE ZINN: No, no, no, no, no. I -- maybe I'm misunderstanding your question, but when they purchased the property the previous owner --

COMMISSIONER RENÉ: Right.

APPLICANT LESLIE ZINN: -- it was I-1. They owned it for a public of years. While they owned it and while it was under lease to BAMA, it was I-1.

COMMISSIONER ATKINS: Having made that statement, Ms. Zinn, I will really defer to Staff because according to the information that we received in our Work Session and all of the documentation that has been found here, that rest with the City of East Point, it always shows that this particular property --

COMMISSIONER RENÉ: Right.

COMMISSIONER ATKINS: -- has always been zoned commercial and Staff has no documentation that shows that the property was zoned something other than commercial and so for us, I guess, the question that Commissioner Rene is asking -- because you made the statement of the assertion that the property was once zoned industrial, do you have any documentation to support that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

statement?

APPLICANT LESLIE ZINN: The court documents state and the final order --

COMMISSIONER ATKINS: Okay. Speaking of court documents, when I look at Exhibit F -- if you have Exhibit F, which is the Complaint and Petition, on Page Two it states that the application for a variance -- let me just go back a little bit. This is filed in Office in The Superior Court of Fulton County, April 16th, 2001. Okay.

APPLICANT LESLIE ZINN: Um-hum.

COMMISSIONER ATKINS: And the plaintiffs are the Wilpurs, George and Barbara Wilpurs --

APPLICANT LESLIE ZINN:

COMMISSIONER ATKINS -- and Ron Jacobs.

APPLICANT LESLIE ZINN: Right.

COMMISSIONER ATKINS: And those are the plaintiffs and the defendant is of course the Planning & Zoning Commission of the City of East Point, Georgia. In this particular document, Page Two, No. 7 clearly states that the application for a variance requested an increase in the useable floor space for a retail operation as specified in City Code 10-2056. It doesn't never mention a rezoning. It talks about a variance but never in rezoning.

APPLICANT LESLIE ZINN: That is the basis for their lawsuit, but they were denied a variance for retail use so --

COMMISSIONER ATKINS: In this document, there's nothing that ever states that the applicants were seeking a rezoning nor does

1 it ever state that the property was zoned industrial and so I guess my
2 question as a follow up to the question of Commissioner Rene --

3 APPLICANT LESLIE ZINN: Um-hum.

4 COMMISSIONER ATKINS: -- is if you have any
5 documentation that shows that this property, which will be contrary
6 to what the City of City of East Point has, that the property 3113
7 Main Street, East Point, Georgia, 30344, was at one time zoned
8 industrial?

9 APPLICANT LESLIE ZINN: What documentation does the
10 Zoning Board have because I ask for it as well and they didn't have
11 any.

12 COMMISSIONER ATKINS: Okay. They have documentation
13 then I'll defer to Staff. I think that Ms. Carter or the zoning attorney
14 can speak to that.

15 MS. CARTER: From 1960 through 2009, the property as we
16 looked on each map on the wall in the Planning and Zoning
17 Department, all of those maps, the zoning maps, certified zoning
18 maps state that the property has always been a commercial property.
19 We do not have any planning maps that said -- state that it was
20 ever I-1.

21 COMMISSIONER ATKINS: Okay.

22 ATTORNEY LINDA DUNLAVY: And let me just for -- to
23 caution this Body in terms of going back and beyond the critical
24 timeframe. The timeframe for this appeal is what was the zoning at
25 the time that Ms. Zinn requested her fence permit? I don't think that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

there's any disputed fact that at the time that the lawsuit at issue was filed that the zoning on this profert was CR. The only question I think relevant to the fence permit is that after this lawsuit was settled or disposed of, was there some action taken by the City of East Point to rezone the property was the undisputed classification of CR to I-1 and the documents found by Staff and myself in reviewing this fairly extensively don't show any rezoning of the property took place after this lawsuit was filed.

COMMISSIONER ATKINS: Okay. Thank you, Madam Attorney. Commissioners, are there any other questions?

COMMISSIONER TUCKER: I guess I'm still confused because I keep going back to her variance application and it's dated 12/7/12. I don't know what was given initially to get this whole thing started. What was given to the Planning and Zoning Department, but to me, I don't see where she's asking for rezoning or that it be reverted to a different zoning, that she's simply asking for a variance. That's where I'm getting lost.

COMMISSIONER ATKINS: And the attorney was explaining that the way it's worded in terms of a secondary variance is really --

COMMISSIONER TUCKER: I understand the secondary variance. I've got the book and I've read that.

COMMISSIONER ATKINS: Um-hum.

COMMISSIONER TUCKER: What I don't understand is what started this process where Ms. Zinn is here today seeking a variance for a fence and from the application that I see, it strictly speaks to a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

variance. How that goes to rezoning?

COMMISSIONER ATKINS: It doesn't. It doesn't go to rezoning Commissioner Tucker. Before we started this discussion, I stated that what's really before us -- we only have two issues before us regarding this case and one, does this Body believe by consensus vote that the property is currently zoned CR and was it zoned CR at the time that Staff denied the application for an eight foot fence and are eight foot fences allow in the CR zoning? So it doesn't really speak to a rezoning. It's really about are we affirming the decision of Staff? That's really what's before us. Are we affirming the decision of Staff to deny the fence application or would this Body want to consensus vote reverse the decision of Staff? And Staff made its decision based on the fact that the property is currently zoned CR and does not allow eight foot fences.

ATTORNEY LINDA DUNLAVY: Commissioner Tucker, I don't know if I can help with the confusion. I have to admit being a little confused when you throw around the term " secondary variance" "variance application" and the wording of the lawsuit where the see the term " variance. " I think what's going on in this case is a fence permit application was filed for erecting a fence out at the Arden's Garden property. There was no variance application for the fence filed. This would be in a different procedural plaster if Ms. Zinn had come in and said, I want vary the requirements of the CR zoning district, for example allow me to have an eight foot fence instead of the four foot fence that is allow in CR. That's not the application that

1 she has. She had an application for a dependence permit. That
2 permit was denied. Then she filed this application, which I believe
3 you are looking at which says variance preapplication review and
4 that document, if you look at it, there are check marks for what kind
5 of application it is and it says "secondary interpretation" and so the
6 application that was filed by Ms. Zinn was an application to review
7 the interpretation of Staff that she should not be permitted to have
8 this eight foot fence in a CR District. That's one sort of thread that's
9 going through this. The at threads that I think is somewhat
10 confusing is that the lawsuit did revolve around variance requests of
11 the property property owners. They requested variances to the
12 parking requirements and to the limitation on retail space. The order
13 of the court, after reviewing the variance application -- reviewing the
14 lawsuit, was essentially that denial of the variances denied the
15 Wilpurs a constitutional use of the property and that's why the court
16 says City of East Point, you've got to rezone this property in
17 constitutional manner. So even though the lawsuit revolved around
18 variances, the judge reached the determination that denial of these
19 variances denied the Wilpurs a constitutional use of that property.
20 After that, what happened, is that the City of East Point and Council
21 for the Wilpurs got together and said, okay. How do we comply --
22 how does the City of East Point comply with the judge's order? And
23 that's where we come fast forward to August 5th of 2002, where the
24 City of East Point held a public meeting and said, we're not gonna
25 rezone the property. We are going to acknowledge that the Arden's

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Garden could be recognized as a nonconforming grandfathered use or at least that is what is on the minutes. That the only evidence that we have and it shows clearly that there was no rezoning action taken by the City of East Point. After that happened, the contempt action filed by the Wilpurs was dismissed in the Fulton County Superior Court and the case was over. Does that help at all or does that just complicate matters?

COMMISSIONER SHELDON: I have a question. So one of the actions that would have been taken here by the applicant would have been to apply for a primary variance and we would have heard it as a primary variance rather than a secondary variance regarding the findings because of the CR zoning. So that could have been one solution, is that correct?

MS. HOLMES: If you review the conditions or the requirements for a primary variance, Ms. Zinn of Arden's Garden is a nonconforming use.

COMMISSIONER SHELDON: Um-hum.

MS. HOLMES: You cannot extend a nonconforming use in accordance to a primary variance. That is one of the conditions you must meet.

COMMISSIONER SHELDON: Okay.

COMMISSIONER ATKINS: Commissioner Wares.

COMMISSIONER WARES: Question just for clarity. It's kind of muddy still. So just say whatever our decision is, is there any way that she can get a permit to put the fence up, is my question? Is

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

there anyway? I heard what you said. I heard what you said.
There -- you know, what can be done is what I'd like to know? What
could be done.

COMMISSIONER TUCKER: And I agree with that. I mean, I
went out and looked at the property and she's a good business for
our downtown. The property is surrounding by like properties with
fences. The back of it has got a fence that's already there. All she's
wanting to do is close it off to park. I wouldn't park my car without
the fence so I think that we need to work with her.

COMMISSIONER ATKINS: I just want to be very clear that
because I think that we're starting to talk a little bit about some
issues that are not really germane to the application or the -- or
what's before us tonight. I understand all of the issues about
perceived crime and all of those things. What's really before us
tonight and I'm going to venture to say this and Madam Attorney,
you can correct me if I'm wrong and I don't have a problem standing
corrected. I think also a part of the confusing is if we never had any
of this documentation about any of the lawsuits, which this could
have come before us without any of this, because really what we're
trying to determine is if Staff was correct in denying the application
for a fence and Staff made it's decision to deny the application for a
fence based on the fact that the property is zoned CR and CR does
not allow eight foot fences. I believe that the reason that we have
this information about the lawsuit is because the applicant is alleging
that the property was zoned I-1 and we were then provided with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

information on lawsuits to see if we ever saw any of that and I know that I did not and I think that that's why we have this information because under that zoning, then it could have been allow. However, that's not what's before us. We're simply trying to affirm or reverse the decision made by Staff when Staff made the decision to denied the fence application.

COMMISSIONER WARES: Mr. Chair.

COMMISSIONER ATKINS: Yes Commissioner Wares.

COMMISSIONER WARES: I appreciate that and I still would like my question answered. I understand everything now, but I City would like my question answered because this is a person that's bringing business to our City and we still need to see if there's anything else that could be done before she applies all over again, pays all this money again. That's all I'm saying. I understand. I know how I'm going to vote but I would still like in the interest of time and money for this applicant I still think if there's something that can be done we should say that or at least acknowledge that that's the question I'm answering so it could be answered so she can do whatever else she needs to do. It's a long process.

COMMISSIONER ATKINS: I could defer to the attorney of that.

ATTORNEY LINDA DUNLAVY: Mr. Chair, I don't disagree with your statement with respect to what are the narrow issues in front of the Commission tonight. At the time same, I understand Commissioner Wares and Commissioner Tucker's concern about, you

1 know, encouraging and maintaining a good business neighbor in the
2 City of East Point. The application for the fence permit, as it stands
3 in my opinion and of course this Body is free to disagree with me, in
4 my opinion does not comply with the requirements. However, I
5 believe that there maybe a way to rework the application to get
6 maybe some, not all, of what Ms. Zinn desires. From a legal
7 standpoint, when I look at our zoning ordinance, what we ee have in
8 regards to con conforming structures, like some of the eight foot
9 fences that are out there right now, is a provision that says you can't
10 expand nonconforming structures. If they would somehow expand
11 the degree or increase the degree of none conformity. I can't
12 profess to be familiar enough with Ms. Zinn's fencing out on the
13 property, but I do understand that there are a lot more fences out
14 you there. It is possible, in my opinion, that Ms. Zinn maybe able to
15 come up with a plan, whereby she remove some of the
16 nonconforming fences that are already out there and ask Staff to
17 review a new permit application where she either removes the
18 nonconforming fences and is sort of given credit to allow her to put
19 up an eight foot nonconforming fences in the rear where she wants
20 to put them in lieu of con conforming fences that are already there or
21 she could bring nonconforming fences into conformity by putting four
22 foot fences that otherwise meet the current requirements. I do think
23 that there is a possibility for reworking the application. The
24 application as it stands, in my opinion, does not meet the
25 requirements of the zoning ordinance, but that's not to say

1 Commissioner Wares, that she will never get a fence and permit.
2 That certainly is not, I believe, the desire of Staff.

3 COMMISSIONER WARES: Thank you. That's what I was
4 looking for.

5 COMMISSIONER SHELDON: So if she removes some, then
6 and replaces it elsewhere then she's not expanding that
7 nonconforming use and that would be one way to look at allowing in
8 a different location, the fence that she's needing for her business.

9 ATTORNEY LINDA DUNLAVY: That is absolutely my opinion.
10 The devil is in the details but, yes.

11 COMMISSIONER ATKINS: Commissioners, are there any
12 other questions.

13 COMMISSIONER SHELDON: Just one more thing.

14 COMMISSIONER ATKINS: Yes, Commissioner Sheldon.

15 COMMISSIONER SHELDON: I think one of the things that we
16 have to keep in mind is that when we -- when we make exceptions to
17 rules, we set precedence that become difficult for us further down
18 the road and that would be an important thing for us to remember
19 just regarding the small part of this issue. The larger issue I think
20 really is something that can be negotiated if it's down with the right
21 paperwork essentially and with the right proposal. So that's where --
22 that is where my vote is coming from.

23 COMMISSIONER ATKINS: Okay.

24 COMMISSIONER TUCKER: Well, I don't want to understand
25 that we do set precedence, but there are reasons for variances and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that's why the coincidences allow variances so there are good reasons for variances as well.

COMMISSIONER SHELDON: This is a secondary variance that has to do with just answering one question and that is what I think is very important here.

APPLICANT LESLIE ZINN: May I say something?

COMMISSIONER ATKINS: Um, well the public hearing is official closed and so in order for you to address the Commission, you'd have to be -- a question would need to be asked of a Commissioner for a Commissioner would allow you to speak.

APPLICANT LESLIE ZINN: Okay.

COMMISSIONER SHELDON: I have no problem with that.

COMMISSIONER WASHINGTON: I have no problem.

COMMISSIONER BRYANT: I have no problem you speaking.

COMMISSIONER ATKINS: Okay. Go ahead, Ms. Zinn.

APPLICANT LESLIE ZINN: I applied for a secondary variance because I was told that I did not meet the criteria for a primary variance.

COMMISSIONER ATKINS: And that's true.

APPLICANT LESLIE ZINN: Okay. So you have a business that is in a building that is 30 feet tall. It's an industrial building.

COMMISSIONER ATKINS: There are lots of buildings that are 30 feet tall. Many of them, people live in and it would be a residential building.

APPLICANT LESLIE ZINN: Okay. But if you look at the

1 buildings surrounding our building and actually the parking and all
2 through the paperwork it talks about how little parking there is for
3 this size building. It says forty-three spaces. We have sixteen. So
4 you have a building that is industrial in use and um, you know, even
5 if we were -- we happen to have a retail portion, which is 'causing
6 the problems. That is 'causing my parking problems, you know, is
7 the retail portion of customers that want to come in. Okay. So you
8 have a thriving business. You have an area that's pretty depressed,
9 I'm sorry but East Point is fairly depressed and you have -- it's not a
10 perceived crime element. It is a crime element that we have in East
11 Point. It's not horrible but you need -- you need to secure your
12 property so when I spoke with Genesa about this and she explained
13 to me the primary. She explain to me the secondary and I said, and
14 where is the it just makes sense variance? You have -- there's -- my
15 hands are tide as far as what I can apply for to put in an eight foot
16 fence. What kind of bad precedent are we starting? My neighbor
17 behind me, eight foot fence. My neighbor to the the left of me, eight
18 foot fence with barbwire. The neighbor next to him eight foot fence
19 with barbwire. There's no precedent being set here. I'm the only
20 person that's not allow to put up an eight foot fence that will be
21 completely invisible from Main Street, from the district. The whole
22 idea what the rezoning was was to create a pedestrian friendly retail
23 environment. Walk up and down Main Street. I am probably the
24 most retail, the most customers coming in.

25 COMMISSIONER ATKINS: And we understand that. And I

1 don't want you to get the sense that we are anti business
2 because we're not and Genesa was exactly correct that you were not
3 allow to apply for a primary variance because you don't meet the
4 conditions and so Staff because of the current zoning laws had to
5 make a decision and you're here tonight for what is called a
6 secondary variance but it's really for this Body to review the decision
7 that was made by Staff based on the current and applicable laws and
8 I just want to caution us about speaking to the other fences at some
9 of the other properties because without an address and without
10 documentation in front of us, I could not tell you if those also were
11 grandfathered in because you do in fact have eight foot fencing at
12 your property and so they could very welcome and say the same
13 thing but I know that yours was grandfathered in. Couldn't have
14 been the same situation for the others so I just want to caution us to
15 speaking to the eight foot fences at those properties. We want East
16 Point Main Street to be very pedestrian friendly and I think that the
17 reason that you have zoning categories in different divisions is
18 because I don't think that clearly you could have industrial uses along
19 your Main Street corridor so there have to be some laws in place and
20 so we're not anti business. That's not what we're saying. As a
21 matter of fact, I go to Arden's Garden. I shop at Arden's Garden.
22 I'm glad that you're here but that's not really what's before me. I
23 also understand from the Work Session that your business is thriving
24 and I'm very very happy to hear that. We're excited that you're here
25 and we want you to stay here but what's before us is did Staff make

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

an error or was Staff correct in denial your fence application based on the current zoning laws?

APPLICANT LESLIE ZINN: And when I met with Regina to talk about this secondary, I said, based on CR zoning it's not incorrect but I have no other option. She said, you're right. You have no other option so help me understand here. What am I suppose to do?

COMMISSIONER SHELDON: I think that's why we ask the question about if there's a possibility of you're removing part of an eight foot fence so that you're not enlarger a con conforming use and just say for discussion that you took that fence up and you moved it back where you needed it and -- there's an eight foot fence in the front of the property, is that correct?

COMMISSIONER ATKINS: That's correct.

APPLICANT LESLIE ZINN: Uh-hum.

COMMISSIONER SHELDON: If that piece fencing were remove and then that you put an eight foot fence where you want it --

APPLICANT LESLIE ZINN: We couldn't do that.

COMMISSIONER SHELDON: Well, that's what we're talking about. It might be --

APPLICANT LESLIE ZINN: We wouldn't be able to because there's no way the back area could accommodate trucks.

COMMISSIONER SHELDON: Well, I just mean that you put the fence where you want it, is what I'm saying. You take the eight foot out that's in the front and instead build what it is you need in the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

back where, you know, what you're asking for.

APPLICANT LESLIE ZINN: But you see we need more parking, more secure parking.

COMMISSIONER SHELDON: Right.

APPLICANT LESLIE ZINN: Okay. The fence in the front protects our vehicles, our trucks, refrigerated truck that -- if that fence were not there, would be broken into on a regular bases and in my prior location which was at 14th and Howell Mill, we were broken into about every six to twelve weeks so that's not a -- it's not an option, you know, so -- yeah.

COMMISSIONER TUCKER: Ms. Zinn.

APPLICANT LESLIE ZINN: Yes. When I came out today, you showed me the the fence and the fence is in a docking area in the front. There's not, I think there's a perception that it surrounds the --

APPLICANT LESLIE ZINN: No way, no. Very small.

COMMISSIONER TUCKER: It's a very attractive front building with seating. It's a very small area in the front. What about the fencing that's directly touching the back of the building. If you were to take some of that fencing off -- I know that's the perimeter of the building and I know --

APPLICANT LESLIE ZINN: My concern about that is that that fencing is protecting very large compressors and everybody knows how valuable copper is and that fence is grandfathered and has a barbwire top. I would not feel comfortable moving that fence.

1 When -- see we only are gonna park our cars there during the day.
2 So I feel comfortable that eight feet is fair protect during the day, but
3 I would not feel that way at night and certainly not with cooper. But
4 may I ask -- one other things I want to bring up the problem is that
5 my retail business is creating the parking problem so maybe we need
6 to look at the four foot, you know, limit for CR. CR is suppose to be
7 for commercial redevelopment, retail and I don't understand what a
8 variance is if you want vary from what the law is. Not every building
9 is a cookie cutter situation.

10 COMMISSIONER ATKINS: Commissioners, are there any
11 other questions?

12 COMMISSIONERS: (No response.)

13 COMMISSIONER ATKINS: There's a motion before us to
14 affirm the decision made by the Planning and Zoning Director of not
15 to accept the Concept Review Submittal Form of Arden's Garden
16 Incorporate to the permitting division of the department of Planning
17 and Zoning and that is wholly. That is wholly affirmation. It was
18 moved by Commissioner Sheldon, seconded by Commissioner Bryant.
19 If there are no other questions or discussion, all in favor sound aye.

20 COMMISSIONERS: Aye.

21 COMMISSIONER ATKINS: All opposed sound nay.

22 COMMISSIONER TUCKER: Nay.

23 COMMISSIONER WARES: Nay.

24 COMMISSIONER ATKINS: Okay. I think that there were two
25 nays, is that correct?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER TUCKER: That's correct.

COMMISSIONER ATKINS: Okay. Two nays so the ayes have it. This Body consensus vote affirms wholly the decision of the Planning and Zoning Director. Okay. Commissioners, our next Agenda Item is announcements. Our next Agenda Item is announce. Staff, are there any announcements?

VIII. **ANNOUNCEMENTS:**

MS. HOLMES: No, sir.

COMMISSIONER ATKINS: Okay. Commissioners, do you have any announcements that are for the good of the Body?

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none at this time, I will entertain a motion to adjourn.

IX. **ADJOURNMENT:**

COMMISSIONER WARES: So moved.

COMMISSIONER TUCKER: I second that.

COMMISSIONER ATKINS: It's been moved by Commissioner Wares, seconded by Commissioner Tucker that we adjourn. All in favor sound aye.

COMMISSIONERS: Aye.

COMMISSIONER ATKINS: All of posed sound nay.

COMMISSIONERS: (No response.)

COMMISSIONER ATKINS: Hearing none. The ayes have it. This meeting is now adjourned.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Attest:

I hereby attest that the foregoing transcript was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 33 represent a true and correct transcript that I am not in any way financially interested in the result of said case.

I am here as an independent contractor for East Point Planning & Zoning Commission.

I was contacted by the offices of East Point Planning & Zoning Commission to provide stenography services to take down the meeting minutes.

The foregoing meeting for the City of East Point Planning & Zoning Commission on January 17, 2013, at 7 o'clock P.M. were taken down by me and transcribed by me this 31st day of January 2013.

Jeanene Harper
Stenographic Stenographer