

Board of Zoning Appeals

Minutes

March 10, 2015

Members present: John Golzy (Chairperson), Lisa Carson, Betty Hollow, Joan Kraynanski, Edward Baum (alternate), Ellen Soltow (alternate).

City officials present: John Paszke (Zoning Administrator), Paul Eschenbacher (secretary).

The meeting was called to order at 7:03pm in Council Chambers, third floor of City Hall. The Chairperson introduced a video about the policies and procedures of the Board of Zoning Appeals. The Chairperson said that, in the absence of one full member of the Board, the two alternates will take two cases each. The Chairperson then swore in, under oath, those intending to give testimony.

Case #15-02V 48 East Stimson Avenue Zone B-3 Fred & Christine Tom, appellants

Appellant is requesting a variance from ACC 23.04.03(C)(2) to allow bed-and-breakfast use for Apartment 3 at 48 East Stimson Avenue, where such use is allowed only on a street officially designated as a state or federal highway, or on Richland Avenue, East State Street, West Union Street, or Columbus Road.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator said that City Council has asked the City Planning Commission to review ordinance(s) having to do with bed-and-breakfast units, but that he has no idea how long it will take.

The Zoning Administrator noted that several bed-and-breakfast places have been caught by the Code Enforcement Office.

The Zoning Administrator said that bed-and-breakfast use is a conditionally permitted use in an R-3 zone, and is only listed as a use in this zone. He said that motels and bed-and-breakfast places are basically the same use, but that the Code section limiting placement of bed-and-breakfast places to main corridor roads has no such restrictions listed for motels. The Zoning Administrator said this has not been a problem so far because Athens motels and inns are already mostly located on the main corridor roads. He said that he is taking the approach that a bed-and-breakfast unit is a conditionally permitted use in an R-3 zone.

Ms. Kraynanski asked as to why Stimson Avenue was not included as a main corridor. The Zoning Administrator said that he did not know.

Mr. Baum asked if bed-and-breakfast use has been discussed in Planning Commission meetings. The Zoning Administrator said that it was brought up at a previous meeting, but they must have definitions of bed-and-breakfast use and motel use.

The Chairperson called on the appellant to testify.

Christine Tom said they moved their business to this building in April of last year. Ms. Tom then referenced several sections of her letter to the Board. She said that they would be at their business during the day to be able to attend to those staying at the bed-and-breakfast. She said that they would have to take good care of the unit in order to be able to rent it. Ms. Tom stated that she thinks Stimson Avenue should be included as a main corridor road.

Ms. Hollow asked if there was sufficient parking. Ms. Tom said that there is plenty of parking, perhaps 18 to 20 spaces.

The Chairperson asked the appellant if she was willing to ask for a temporary use permit of one year instead of a variance, as there could be a change in the bed-and-breakfast rules. Ms. Hollow then explained to Ms. Tom the specifics of what a temporary use permit is. The Chairperson pointed out that the City could allow such a use on Stimson Avenue, or they could say no to such a use.

The Chairperson called on anyone wanting to speak in favor of the variance.

Paige Aloft (Executive Director, Athens County Convention and Visitors Bureau) addressed the Board. Ms. Aloft referenced a letter of support from the Bureau. She said that the City Code is vague about bed-and-breakfast use. She also said that her office gets requests almost daily about unique lodging in the area. Ms. Aloft said that she thinks the appellants' bed-and-breakfast place would be a great pilot example for this area. She also said that the building is already a business operation, and that she believes Stimson Avenue should be a main corridor road.

The Zoning Administrator requested that the Board add a condition to the temporary use permit that would have the appellants maintain their rental permit for a year, so that the Code Enforcement Office may inspect the unit.

Ms. Carson said the Board should not be deciding bed-and-breakfast cases.

The Chairperson called on anyone wanting to make general comment about, or speak against the variance. No one came forward. The Chairperson called on the appellant for rebuttal. The appellant declined. The Chairperson closed the floor for discussion.

Mr. Baum said that he likes the idea of a temporary use permit for this case, as the City sorts out rules for this situation. Ms. Kraynanski said that exceptional circumstances for this case could be that Stimson Avenue fits the criteria of a main corridor.

The Chairperson asked the appellant if she wants a variance or a temporary use permit. Ms. Tom said that she would prefer asking for a variance, but that it sounds like the Board wants to review for a temporary use permit.

On a motion by Ms. Hollow, seconded by Mr. Baum, the Board considered to grant a temporary use permit for a period of one year to the property at 48 East Stimson Avenue from ACC 23.04.03.(C)(2) to allow a bed-and-breakfast use for Apartment 3, where such use is allowed only on a street officially designated as a state or federal highway, or on Richland Avenue, East State Street, West Union Street or Columbus Road and with the condition that the one three (3)-bedroom apartment be inspected by appropriate agencies and that the rental permit for this unit is maintained for at least one year.

FINDINGS:

- 1.) TEMPORARY NATURE:** Yes.
- 2.) NO SUBSTANTIAL STRUCTURE:** Yes.
- 3.) NO DETRIMENT TO PUBLIC:** Yes.

The Chairperson called for a vote: Baum, Carson, Golzy, Hollow, Kraynanski – yes. No one – no. Motion approved; temporary use granted.

Case #15-03V 52 Columbia Avenue Zone R-1 Gary Kerber, appellant

Appellant is requesting a variance from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow an addition to a house with lot coverage of forty percent (40%) where thirty percent (30%) is the maximum allowed, a side setback of three feet (3') where four feet (4') distance is the minimum allowed, and from ACC 23.10.01, Table B, Off-Street Parking Requirements, to allow one (1) parking space where two (2) parking spaces are the minimum requirement.

The Chairperson called on the secretary to testify.

The secretary noted that the appellant received a previous variance (#03-29V) for greater lot coverage. The secretary also noted that all listed bulk control nonconformities are already existing, and the proposed deck will not change them.

The Chairperson called on the appellant to testify.

Gary Kerber said that he would build a 12 feet by 18 feet deck above an existing concrete patio. Mr. Kerber referenced his letter to the Board and presented plans of the project. He said that he was building the deck 18 to 24 inches above the patio.

The Zoning Administrator said that the plans presented to the Code Enforcement Office indicated the deck would be built one story above the patio. Mr. Kerber said that was incorrect. The Zoning Administrator said that, if the appellant is building it just above the patio, no variance is needed.

The case was dismissed.

Appellant is requesting a variance from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow an addition to a house with a front yard setback of twenty feet six inches (20.5') where twenty-five feet (25') distance is the minimum requirement.

The Chairperson called on the secretary to testify.

The secretary said the case was self-explanatory, that the appellants want to extend their kitchen into the front setback.

The Chairperson called on the appellant to testify.

Marilyn Smith (appellant wife) addressed the Board. Ms. Smith noted that the carport for the house was turned into the garage in the 1990s. She said that a Code Officer asked her how the project was approved since it did not meet City Code bulk controls. Ms. Smith also noted the extended wall by the garage. She presented photographs of the house to the Board, and said that the kitchen would be extended to the edge of the garage.

Ms. Smith said that they want more kitchen room. She also indicated that it would have a better view to see a bus that picks up their son. Ms. Smith said the extended kitchen would also provide more light to help with her medical condition of macular degeneration. She stated that they could build the kitchen forward three and a half feet without a variance. The Chairperson said that the Board cannot consider her son or her condition in deciding the variance, as they must decide based on the property itself.

The Zoning Administrator said that he did not know why the previous garage project was approved, or variance needed for the front setback.

Ms. Smith said that she cannot see any detriment to the neighborhood, as the project would improve property value, so it improve the neighbors' property values.

The Chairperson called on anyone wanting to speak in favor of the variance. No one came forward. The Chairperson called on anyone wanting to speak against the variance.

Karen Williams (59 Charles Street) addressed the Board. Ms. Williams said that she opposes the variance. She said that the front setback zoning restrictions are to ensure equal and consistent visual space for everyone in the neighborhood. Ms. Williams said the current building does not conform to size limits, and there has already been an addition to it. She stated that she does not think it is in the best interest to grant the variance, and that the project seems unnecessary.

The Chairperson noted the list of neighbors submitted to the Board indicating no objections to the project. He also noted a letter from Joseph and Lynda Berman indicating their opposition to the project.

The Chairperson called on the appellant for rebuttal. Ms. Smith said that there is only one floor above the garage, and only two stories of the house are visible from the street, even though one can see three stories from the back.

William Earl Smith addressed the Board. Mr. Williams said that the Bermans were concerned about the project making the front door be at the end of a tunnel. Mr. Williams said that the front door would be moved forward.

The Chairperson closed the floor for discussion.

On a motion by Ms. Kraynanski, seconded by Ms. Carson, the Board considered to grant a variance, in Case #15-03V, for the property at 55 Charles Street, William Earl Smith, appellant, from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow an addition to a house with a front yard setback of twenty feet six inches (20'6") where twenty-five feet (25') distance is the minimum requirement.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** Do not see any.
- 2.) **HARDSHIP AND DIFFICULTY:** No.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** The property already has a privilege compared to other houses.
- 4.) **MINIMUM VARIANCE:** No, it is already in the front setback.
- 5.) **ABSENCE OF DETRIMENT:** Some neighbors have no objection, but closest neighbors are saying there would be detriment.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: No one – yes. Carson, Golzy, Hollow, Kraynanski, Soltow – no. Motion denied; variance denied.

Case #15-05V 16 West State Street Zone B-3 Michael Smeltzer, appellant

Appellant is requesting a variance from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow a renovation and change of use (from commercial only to mixed commercial/residential) of a building with a right side setback of zero feet (0') where five feet (5') distance is the minimum requirement.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator said the project would be to tear down the larger addition to the building, and add two bedrooms on top of the shed roof addition of the original house. He added that the proposed square footage of the completed building would be less than it is now. He said that the change of use of the building caused the refusal of the permit application. The Zoning Administrator also noted that the nonconforming side setback already exists.

The Chairperson called on the appellant to testify.

John Valentour (RVC Architects, 131 West State Street, appellant's representative)

addressed the Board. Mr. Valentour said the house is on the Historical Register, and the plans for it are keeping the character of the house intact. He also said the proposed apartment would have a separate entrance on the side of the house. Mr. Valentour then referenced his letter to the Board.

Ms. Kraynanski asked about parking. Mr. Valentour and the Zoning Administrator said there would be nine parking spaces where six are required.

Mr. Baum asked about the age of the house. Mr. Valentour said that he was not sure, but estimated it was built in the early 1900s.

The Chairperson called on anyone wanting to speak in favor of, make general comment about, or speak against the variance. No one came forward.

The Chairperson closed the floor for discussion.

On a motion by Ms. Carson, seconded by Ms. Kraynanski, the Board considered to grant a variance from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow a renovation and change of use (from commercial only to mixed commercial/residential) of a building with a right side setback of zero feet (0') where five feet (5') distance is the minimum requirement.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** The house is oddly sited (not parallel) on the lot.
- 2.) **HARDSHIP AND DIFFICULTY:** The size of the lot and the setbacks of the house.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** No detriment.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Carson, Golzy, Hollow, Kraynanski, Soltow – yes. No one – no. Motion approved 5-0, variance granted.

OTHER BUSINESS:

--Disposition of minutes from February 10, 2015 meeting. On a motion by Ms. Kraynanski, seconded by Ms. Carson, the Board voted to accept the minutes as presented 6-0.

The meeting was adjourned at 8:36pm.

John Golzy, Chairperson

Paul Eschenbacher, secretary