

# Board of Zoning Appeals

## Minutes

November 10, 2020

Members present: John Golzy (Chairperson), Lisa Carson, John Gutekanst, Joe Krause, Kay Tousley, Robert DeLach (alternate).

City officials present: David Riggs (Zoning Administrator), Kerri Yake (Secretary), The Government Channel

The meeting was called to order at 7:04 online as an Internet Conference. The Chairperson then read a statement about the policies and procedures of the Board. He then swore in, under oath, those intending to give testimony.

**Case #20-10V                      748 East State Street                      Zone: B-3                      Mark Scott, Appellant**

**Appellant is requesting a variance from ACC 23.04.07 (A)(3) to allow a drive-through retail store within seventy (70) feet away from an R-1 Zone, where two hundred (200) feet is required.**

The Chairperson called on Zoning Administrator to testify. Mr. David Riggs said the Application and Use would typically be allowed in a B-3 Zone, but if you look at ACC 23.04.07 (A)(3) it says that a drive-in, drive-through, eating and drinking establishments that the principal building needs to be two hundred (200) feet from any R-1 or R-2 Zone. It does not meet that in this case. Mr. John Golzy mentioned a case about a year ago located at 284 East State Street and they were looking to put in a window pick-up and it was denied. Chairperson asked if there were any questions for the Code Office from the members. Mr. DeLach asked for clarification on the building located two hundred (200) feet from an R-1 and R-2 Zone because it is an R-2 Zone that is being looked at. Mr. Riggs confirmed that it is an R-1 or an R-2 Zone. Lisa Carson mentioned that as described the case is regarding drive-through and retail, and is the objection the drive-through or the whole thing? Would it be possible to allow the retail without the drive-through? Ms. Carson asked the Appellant to clarify what options they are interested in. Mr. Golzy asked if there were any other questions before they went to Mr. Scott.

The Chairperson closed the floor for discussion.

**On a motion by Mr. Gutekanst, seconded by Mr. Thomas, the Board moved to grant a variance to the property at 3 Sunnyside Avenue from ACC 23.03.10 to allow two (2) primary structures on one (1) lot, where one (1) primary structure per lot is allowed.**

## Findings:

- 1.) **Exceptional Circumstances:**
- 2.) **HARDSHIP AND DIFFICULTY:**
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:**
- 4.) **MINIMUM VARIANCE:**
- 5.) **ABSENCE OF DETRIMENT:**
- 6.) **NOT OF A GENERAL NATURE:**

The Chairperson called for a vote: No - Carson, No - Gutekanst, No – Thomas, No – Krause, No – Golzy. Motion denied 5-0; variance not granted.

**Case #20-11V                      14 & 14 ½ Morris Avenue                      Zone: R-1                      Trent DeBruin, Appellant**

Appellant is requesting a variance from ACC 23.03.11 (A)(1) to allow a zero (0) left setback, where five (5) feet is required and ACC 23.10.01 Table A, to allow forty four (44) percent structure lot coverage, where thirty (30) percent is required, and sixty two (62) percent total lot coverage, where sixty (60) percent is the maximum. Seeking variance to remove existing garage, connector, and an addition to the rear of the main house, a nonconforming 'grandfathered' rental until will be eliminated.

Replacing the existing garage with a new proposed shared, unattached two (2) car garage and adjoining driveways with One Hundred Forty Five (145) East State Street, would replace two (2) independent garages. With the removal of the garage, connector, and addition, as well as replacing existing front porch with smaller porch, both Structure Lot Coverage as well as the Total Lot Coverage will be decreased.

On a motion by Mr. Gutenkanst, seconded by Mr. Thomas, the Board moved to grant a variance to the property at 3 Sunnyside Avenue from ACC 23.03.10 to allow two (2) primary structures on one (1) lot, where one (1) primary structure per lot is allowed.

## Findings:

- 1.) **Exceptional Circumstances:** The property in question or to the intended use of the property that generally, does not apply to other properties, class, or uses in the same zone. Basically this is a block with three streets going around, lot is larger than usual. Takes up three lots or more. Two principal occupations would be reasonable. Ms. Lisa Carson pointed out that both buildings were there when the McMillan's bought the property.
- 2.) **HARDSHIP AND DIFFICULTY:** No.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Unique situation and not giving any more privilege than other comparable properties which is not in the same vicinity or same zone.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.

**6.) NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes - Carson, Yes - Gutekanst, Yes – Thomas, Yes – Krause, Yes – Golzy. Motion approved 5-0; variance granted.

**Case #20-12V                      145 East State Street                      Zone: R-1                      Trent DeBruin, Appellant.**

**Appellant is requesting a variance from ACC 23.03.11 (A)(1) to allow zero (0) rear setback, where five (5) feet is required. Seeking variance to replace existing garage with a new proposed shared, unattached two (2) car garage and adjoining driveways with Fourteen (14) Morris Avenue to replace two (2) independent garages.**

**On a motion by Mr. Gutenkanst, seconded by Mr. Thomas, the Board moved to grant a variance to the property at 3 Sunnyside Avenue from ACC 23.03.10 to allow two (2) primary structures on one (1) lot, where one (1) primary structure per lot is allowed.**

**Findings:**

- 1.) Exceptional Circumstances:** The property in question or to the intended use of the property that generally, does not apply to other properties, class, or uses in the same zone. Basically this is a block with three streets going around, lot is larger than usual. Takes up three lots or more. Two principal occupations would be reasonable. Ms. Lisa Carson pointed out that both buildings were there when the McMillan's bought the property.
- 2.) HARDSHIP AND DIFFICULTY:** No.
- 3.) PRESERVATION OF EQUAL PROPERTY RIGHTS:** Unique situation and not giving any more privilege than other comparable properties which is not in the same vicinity or same zone.
- 4.) MINIMUM VARIANCE:** Yes.
- 5.) ABSENCE OF DETRIMENT:** Yes.
- 6.) NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes - Carson, Yes - Gutekanst, Yes – Thomas, Yes – Krause, Yes – Golzy. Motion approved 5-0; variance granted.

**Case #20-13T                      1 and 5 North Congress Street                      Zone: R-1                      Athens Mental Health Inc., dba  
The Gathering Place, Appellant**

**Appellant is requesting a conditional use from ACC 23.07.02 (D) to allow a temporary structure and use on premises (parking lot) for a purpose that does not conform to the regulations prescribed in the zoning code for the zone in which it is located. Seeking a Temporary Permit for a term of no longer than twelve (12) months, for a proto-type model, Conestoga Hut, a “micro-shelter” that provides a person with roughly sixty (60) square feet**

of lockable, dry, and safe space to temporarily live while working to improve their life situation and construct a fence lower than six (6) feet to gate in parking lot to provide safety for the renters of the Conestoga Hut. An extension may be granted by the Board of Zoning Appeals.

On a motion by Mr. Gutenkanst, seconded by Mr. Thomas, the Board moved to grant a variance to the property at 3 Sunnyside Avenue from ACC 23.03.10 to allow two (2) primary structures on one (1) lot, where one (1) primary structure per lot is allowed.

**Findings:**

- 1.) **Exceptional Circumstances:** The property in question or to the intended use of the property that generally, does not apply to other properties, class, or uses in the same zone. Basically this is a block with three streets going around, lot is larger than usual. Takes up three lots or more. Two principal occupations would be reasonable. Ms. Lisa Carson pointed out that both buildings were there when the McMillan's bought the property.
- 2.) **HARDSHIP AND DIFFICULTY:** No.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Unique situation and not giving any more privilege than other comparable properties which is not in the same vicinity or same zone.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes - Carson, Yes - Gutekanst, Yes – Thomas, Yes – Krause, Yes – Golzy. Motion approved 5-0; variance granted.

Case #20-14V

286 West Union Street

Zone: B-3

Athens Soil & Water  
Conservation District, Appellant

Appellant is requesting a variance from ACC 25.04.06, ACC 25.04.06 (f) to allow an accessory structure greater than six hundred (600) square feet that is requesting relief from the elevation and dry flood proofing standards and does not meet the opening requirements of subsection 25.04.04 (E)((3).

On a motion by Mr. Gutenkanst, seconded by Mr. Thomas, the Board moved to grant a variance to the property at 3 Sunnyside Avenue from ACC 23.03.10 to allow two (2) primary structures on one (1) lot, where one (1) primary structure per lot is allowed.

**Findings:**

- 1.) **Exceptional Circumstances:** The property in question or to the intended use of the property that generally, does not apply to other properties, class, or uses in the same zone. Basically this is a block with three streets going around, lot is larger than usual. Takes up three lots or more. Two principal occupations would be reasonable. Ms. Lisa Carson pointed out that both buildings were there when the McMillan's bought the property.
- 2.) **HARDSHIP AND DIFFICULTY:** No.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Unique situation and not giving any more privilege than other comparable properties which is not in the same vicinity or same zone.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes - Carson, Yes - Gutekanst, Yes – Thomas, Yes – Krause, Yes – Golzy. Motion approved 5-0; variance granted.

OTHER BUSINESS:

--Disposition of minutes from July 14, 2020 meeting. On a motion from Mr. Thomas, seconded by Mr. Krause, the Board moved to accept the minutes of the June 9, 2020 meeting as presented.

The meeting was adjourned at 7:26.

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John Golzy, Chairperson

Date

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Kerri Yake, Secretary

Date

