

**Office of Code Enforcement and
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City of Athens
ATHENS, OHIO

**Board of Zoning Appeals
Minutes
September 14, 2021**

Members present: Lisa Carson (Chair), Robert Delach, John Gutekanst, Kay Tousley, Aaron Thomas (Alternate).

City Officials present: David Riggs (Zoning Administrator).

The meeting was called to order on September 14, 2021 at 7:00 pm at City of Council Chambers, 8 East Washington Street, Third Floor, Athens, OH. The Chairperson played a video stating the policies and procedures of the Board. She then swore in, under oath, those intending to give testimony.

Case #21-08V

63 S. Court Street Zone: B-2D

**RVC
Architects**

Appellant is requesting a variance from ACC 23.10.01, Table B off Street Parking to allow twenty (20) remote parking spaces, where forty (40) parking spaces are required.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator David Riggs, explained that the Appellant originally requested 0 remote parking spaces, where forty (40) are required, and was denied. The Appellant is now requesting to allow twenty (20) remote parking spaces.

The Chairperson asked if there were any questions from the Board Members for Mr. Riggs. There were no questions.

Appellant, John Stephenson (131 W State Street), addressed the board. Mr. Stephenson explains the building at 63 S. Court Street was of mercantile use previously, and does not seek to change the occupancy of the first floor. Mr. Stephenson seeks to convert second and third floor to twenty efficiency, or single bedroom, apartment units. He stated that the exterior of the building would remain unchanged, with exception of signage of potential future first floor occupant. Appellant requests to allow twenty remote parking spots at 190 W. Union Street, which is approximately 2,300 feet from apartment building. Parking onsite would require major structural changes to building and would require construction to city sidewalks to allow for entry and exit ways. Mr. Stephenson provided the board with an aerial map of the property.

Ms. Tousley asked if more than one person would be allowed to occupy each unit, possibly raising the total occupancy of the building to more than twenty people.

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Mr. Stephenson answered it would be possible for two people to occupy one apartment, for example – married couples.

Ms. Carson asked if building parking at the current location of the building uptown would theoretically remove a few street parking spots.

Mr. Stephenson replied that the basement is a fourteen feet difference from street level – which would affect space for parking on-site and appearance of building.

Building is currently owned by masonic lodge has purchase agreement with Student Rentals Inc. Can Parking be leased at masonic lodge? Not for intent, they need parking for their own needs.

No other questions. No one interested in speaking in favor or general.

Mr. John Wharton spoke against the variance citing concern merchants uptown, that already struggle with consumer parking availability. He refers to current issues merchants face such as free parking offered around holidays, commercial loading zones, and higher percentage of students owning cars. He states that tenants at 63 S. Court Street could potentially add congestion to the area by using street parking spots for unloading groceries, etc.

Mr. Wharton went on to discuss the cost of developing parking in the basement and provided documents showing that the space was originally developed as car dealership, and not for merchant use. He stated that 3600 square feet would be needed to accommodate 20 parking spots, and he believes the property needs onsite parking.

The Chairperson asked Wharton to be brief.

Mr. Wharton argued onsite parking is possible, and that the proposed distance and leasing is a concern.

Ms. Carson asked about statement of students with cars, she is hearing otherwise.

Mr. Wharton responds this is his opinion based on his interactions with 800+ students.

Ms. Carson restates Mr. Wharton's statements of complying with code, and replies that if council changes parking code, previous code applicants will have to deal with that.

Mr. Wharton brings up code mentioning residences within 1500ft of public transit not requiring parking – says new and current properties will not need to comply with parking. Asks who will do the parking study and what the grounds of the study are if this were to take place.

Mr. Gutekanst asked if Mr. Wharton considers the intersection in question to be busier than intersection at Broney's.

Mr. Wharton responds yes.

Mr. Gutekanst asks Mr. Wharton if he believes building a parking lot at this busy intersection would pose any potential danger.

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Mr. Wharton replies not to his knowledge.

Mr. Gutekanst asks the code office if any buildings in the city have been grandfathered in to allow for no parking spaces.

Riggs states he is unsure and needs further research to answer. Mr. Wharton says according to his research buildings have been grandfathered in, but there have been no variances granted with no parking available.

Mr. Thomas asked if it is possible for city to cut out curbs with metered parking spaces to accommodate for entryway/exit way of onsite parking.

Mr. Riggs stated that at least 2 street parking spaces will be removed per entry way for curb cuts

No others speak in opposition. Appellant asked to return to the stand.

Mr. Stephenson returns. He states that Broney's already had an alleyway and structure for additional parking, but the building at 63 S Court Street would take more footage under building to incorporate an entrance on union and exit on court. He states that exit turning out by traffic light on Court Street would cause congestion in area of high foot traffic.

Mr. Thomas asked if it was possible to cut square footage of retail space in order to accommodate for parking on first floor.

Mr. Stephenson replied it would be a similar situation, that it would be a high cost with structural changes over \$1-2 million with the creation of fewer than twenty parking spaces.

Asked if building has been purchased yet

Mr. Stephenson states there is a purchase agreement in place.

Mr. Thomas asked if no other closer parking options, previous cases similar situations wanting to park at fairgrounds

Mr. Stephenson closer to town than fairgrounds. Regarding leased parking – one way or the other parking will be leased by other landlords in town.

Ms. Carson states she does not want this to turn into back and forth.

Mr. Wharton interrupts that he is stating facts and there was no previous alley behind Broney's.

Ms. Carson continues that the board has the information needed to make a decision. She thanks Mr. Stephenson and Mr. Wharton for sharing their views and closes the discussion.

Mr. Riggs suggests to propose two separate motions: one being this is a significant change and whether to see the case or not, then vote on variance itself.

Ms. Carson motions to vote on substantial change. Motion to vote in favor of a substantial change passes 5-0.

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On a motion by Kay Tousley, seconded by Aaron Thomas, the Board moved to grant the property at 63 S. Court Street a variance from ACC 23.10.01, Table B Off Street Parking to allow twenty (20) remote parking spaces, where forty (40) parking spaces are required.

Findings:

- 1) **EXCEPTIONAL CIRCUMSTANCES:** Yes, since on-site parking would be on a busy street corner
- 2) **HARDSHIP AND DIFFICULTY:** Yes
- 3) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes granted special privilege – intended use of property should be considered.
- 4) **MINIMUM VARIANCE:** Yes
- 5) **ABSENCE OF DETRIMENT:** No, traffic may be affected
- 6) **NOT OF A GENERAL NATURE:** Parking is of general nature.

The Chairperson called for a vote: Yes – Delach, Yes – Tousley, Yes – Carson, No – Gutekanst, No – Thomas. Motion passed 3-2.

**Case #21-09V
Architects**

12-14 N. Court Street Zone: B-2D

RVC

Appellant is requesting a variance from ACC 23.10.01, Table B Off Street Parking to allow eight (8) remote parking spaces.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator David Riggs explained that this is an older structure that originally had rental units on second and/or third floor with no parking spaces required because it was grandfathered in. Appellant seeks to add additional unit upstairs which would void grandfather clause, and such require 8 parking spots required for residential area. This would accommodate parking for the current units plus additional unit.

The Chairperson calls Appellate to testify.

Appellate, John Stephenson (131 W State Street.) states the 3rd floor unit is currently two bedroom, three person occupancy. The new apartment will be a five bedroom, five person occupancy apartment. The variance for parking to be remote on property owned by same property owner 1600 feet from property in lieu of 250 feet required.

Mr. Thomas asks if current tenants currently lease parking.

Mr. DeLuca (15 Dove Drive) states that tenants lease secure parking next door, as an option given to them.

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Ms. Carson states that she is unsure if the variance can be granted until the construction of the parking lot is completed.

Mr. Riggs states that the variance can be approved pending the completion of parking lot.

Construction of apartment has not begun. Mr. Stephenson believes there will be plenty of time to complete construction of parking lot prior to completion of new rental addition.

Ms. Carson asks if this needs to be clearly stated in variance

Mr. Riggs suggests to include this approval be completed before occupancy of new apartment. 4 spots currently there used by businesses. Dan DeLuca 15 Dove Drive

Ms. Tousley asks about June 29 memo parking will be at 17 ½ S Lancaster for 7 spaces but should it be 8.

Mr. DeLuca confirms they are requesting variance to be approved for 8 parking spots.

The Chairperson asks the board if there are any additional questions for Mr. DeLuca.

There are no more questions for Mr. DeLuca.

The Chairperson asks the board if there are any additional questions or comments on the case.

There are no additional questions or comments.

The Chairperson confirms Mr. Stephenson has no further comments and closes the discussion.

On a motion by Aaron Thomas, seconded by John Gutekanst, the Board moved to grant the property at 12-14 N. Court Street a variance from ACC 23.10.01, Table B Off Street Parking to allow eight (8) remote parking spaces.

Findings:

- 1) EXCEPTIONAL CIRCUMSTANCES:** No exceptional circumstances
- 2) HARDSHIP AND DIFFICULTY:** Yes
- 3) PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes
- 4) MINIMIM VARIANCE:** Yes
- 5) ABSENCE IF DETRIMENT:** No
- 6) NOT OF A GENERAL NATURE:** Yes, parking is of general nature.

The Chairperson called for a vote: Yes – Thomas, Yes – Delach, Yes – Tousley, Yes – Carson, Yes – Gutekanst. Motion passed 5-0.

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**Case #21-10V
Shultz**

355 E. State Street Zone B-3

Richard

Appellant is requesting a variance from ACC 23.04.07 (A)(3) to allow an eating and drinking establishment permitted within one hundred fourteen feet (114'), where two hundred feet (200') is required when it abuts an R-1 or R-2 Zone.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator David Riggs restates code requirement and that the appellant is requesting a variance for 114 feet where two hundred feet (200') is required.

Ms. Carson notes similarity to Dr. Mays Thai Kitchen.

Appellant Richard Shultz 41228 Gibson Ridge Road Albany OH 45710, explains project will convert the previous VFW location, which was listed as social/fraternal organization, to a family eating/drinking establishment (Kiser's BBQ). The building is in close proximity. Want to convert to family dining area, parking is already there.

Mr. Gutekanst asks if there are any residences in close proximity to the building. Mr. Thomas clarifies that the 114 feet is the distance to the closest residence at Putnam Square.

Sean Kiser (105 Wonder Hills Drive, Athens, OH.) states there are no plans to serve alcohol at this time. Previous location did obtain liquor license but did not sell well so they discontinued sale of alcohol.

The Chairperson asks the board if there are any additional questions or comments on the case.

There are no additional questions or comments.

The Chairperson closes the discussion.

On a motion by John Gutekanst, seconded by Kay Tousley, the Board moved to grant the property at 355 E. State Street a variance from ACC 23.04.07 (A)(3) to allow an eating and drinking establishment permitted within one hundred fourteen feet (114'), where two hundred feet (200') is required when it abuts an R-1 or R-2 Zone.

Findings:

- 1) **EXCEPTIONAL CIRCUMSTANCES:** Yes, close proximity to other businesses, new stop light
- 2) **HARDSHIP AND DIFFICULTY:** Yes, building has been vacant for some time
- 3) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes – for example Village Bakery granted similar rights

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- 4) **MINIMUM VARIANCE:** Yes
- 5) **ABSENCE OF DETRIMENT:** Yes, no homeowner opposition
- 6) **NOT OF A GENERAL NATURE:** No

The Chairperson called for a vote: Yes – Thomas, Yes – Delach, Yes – Tousley, Yes – Carson, Yes – Gutekanst. Motion passed 5-0.

**Case #21-11V
Jennings**

28 S. May Avenue Zone R-1

Michele

Appellant is requesting a variance from ACC 23.03.14 to allow a zero (0) front setback, where twelve and a half (12.5) foot setback is required.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator, Mr. Riggs, explains the case, the residence is a corner lot on May Street, so the front setback is from May back. The second main yard is half that distance from Elmwood, which is where the house currently sits. Appellant is asking to go all the way to the property line on Elmwood side, taking setback from 12.5 feet to approximately zero feet. May eventually ask to take some of right of way with a special use of right of way permit, which would go to city council.

Ms. Carson and Mr. Thomas express confusion of case. Ask where gate would reside. They would like to take fence onto edge of property line on Elmwood, resulting in zero setback on second main yard. Right of way is currently wide at 50-60 feet

Appellant approaches Michele Jennings (28 S. May Avenue). Requests to build fence in city right of way. There is currently mature landscaping in the right of way, estimated to be around 6 feet, so building a fence behind these bushes would not obstruct the line if sight any further at that part of the property. Compliance with current required setbacks would make it hard to maintain space between landscaping and fence. Notes similar fences on Elmwood and Lincoln Street. Will not extend to the corner of May Street and Elmwood Avenue so would not obstruct sight lines. Fence would not reach the driveway so would not pose block to alleyway. Requesting 6 feet high fence for security of dog.

Mr. Riggs. And Ms. Tousley confirm that current code states fence must be 6 feet or less, so this would not be included in the variance. Neighbors (to the north) fence encroaches on her property over a foot. Want to move fence to property line to have full use of property. Not asking them to remove landscaping. Appellant provides board with photos of surveyed land, and copy of easement regarding neighbors fence encroaching property line.

Mr. Delach questions sightline from alley, appellant states should will not be building fence within 10 feet required by current code and is not including that in variance

Mr. Gutekanst states he spoke to appellants neighbors, and they have had their car hit in said alleyway.

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Ms. Carson argues bushes would also obscure sightline.

Mr. Riggs clarifies that the variance only includes moving fence to property line up Elmwood, not into right of way, which would require going to city council as mentioned earlier.

Mr. Thomas asks how far the fence would extend. It's confirmed that the fence would not pass the garage.

The Chairperson asks the board if there are any additional questions or comments on the case.

There are no additional questions or comments.

The Chairperson closes the discussion.

On a motion by Robert Delach, seconded by Aaron Thomas, the Board moved to grant the property 28 S. May Avenue a variance from ACC 23.03.14 to allow a zero (0) front setback, where twelve and a half (12.5) foot setback is required.

Findings:

- 1) **EXCEPTIONAL CIRCUMSTANCES:** Yes, mature landscaping on property
- 2) **HARDSHIP AND DIFFICULTY:** Yes, full use of tenant's space
- 3) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes **MINIMUM VARIANCE:** Yes
- 4) **ABSENCE OF DETRIMENT:** No – concerns raised not applicable
- 5) **NOT OF A GENERAL NATURE:** No

The Chairperson called for a vote: Yes – Thomas, Yes – Delach, Yes – Tousley, Yes – Carson, Yes – Gutekanst. Motion passed 5-0.

OTHER BUSINESS:

Approved meeting minutes from May 11, June 1, as amended, and June 8 meetings.

June 1 Meeting Minutes Amendment: John Golzy – “Yes” vote recorded is incorrect, changed to “No”. 3-2 ruling stated is correct.

Meeting adjourned at 8:29 pm.

Lisa Carson, Chairperson

Date

David Riggs, Zoning Administrator

Date