

**Office of Code Enforcement and
Community Development**

28 Curran Drive
Athens, OH 45701

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<http://www.ci.athens.oh.us>



City of Athens
ATHENS, OHIO

**Board of Zoning Appeals
Minutes
October 11, 2022**

Members present: Lisa Carson (Chairperson), Kay Tousley, Kelly Sauber, Ben Lachman, Joe Krause.

City Officials present: David Riggs (Zoning Administrator).

The meeting was called to order on October 11, 2022 at 7:20 pm at City Council Chambers, 8 East Washington Street, Third Floor, Athens, OH. The Chairperson played a video stating the policies and procedures of the Board.

Chairperson Lisa Carson swore in all intending to speak tonight.

Hearings:

1. Case #22-10V 6 Pomeroy Road Zone B-3 Umbrella of Athens, LLC / appellant

Appellant is requesting a variance from ACC 23.04.05 (A) (1) to allow a residential space on the ground floor in a B-3 Zone.

The Chairperson called on the Zoning Administrator to testify.

Mr. Riggs noted that Cases #22-10V and #22-11V could be discussed together. Explained that the property in question is located in a B-3 zone, and thus subject to the restrictions of B-2 and B-2D zones. Residential use is permitted only on the second floor and above in these zones. Mr. Riggs noted that there is a history of residential dwelling on the first floor in this property.

The Chairperson asked whether the first floor had been used for residential dwelling for a long time.

Mr. Riggs responded that it had been used for such purposes for as long as he has been the Zoning Administrator (three years) and that the previous Administrator was also aware of this use.

Joe Krause inquired as to the last time the property was used as a business.

Mr. Riggs was not aware of an exact date.

Kay Tousley asked whether it had ever been used as a business.

Mr. Riggs explained that it has been used as a business in the past.

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The Chairperson called upon the appellant to speak.

Ally Rapp Lee, 51 Madison Avenue – The Chairperson asked whether appellant was aware of when the property was last used as a business. Appellant explained that one of the previous owners was a real estate agent and established a real estate business on the property, but appellant was unsure of an exact date.

The Chairperson asked why appellant was seeking a variance.

Appellant explained that the apartments in question are occupied by veterans who receive HUD vouchers. Appellant wishes to make the property both HUD approved and city approved and noted a shortage of affordable/accessible housing within the City of Athens. Explained that the property already complies with other rental regulations, such as parking, and that the residents are happy with the location.

Joe Krause asked how long the tenants have resided there.

Appellant explained that the lease situation was unclear, but tenants have lived there for at least three years.

Joe Krause asked for clarification.

Appellant explained that the previous owner only provided appellant with a lease agreement for one tenant. Opined that papers may have been hard to find after the previous owner passed away.

The Chairperson asked whether appellant had plans for the other parts of the property.

Appellant stated that there are tenants in about half of the buildings and that all other units on the property are approved for rental purposes. Noted that Code Officer Brian Zoulek performed an inspection in the past year. Appellant explained that a basement apartment is currently being renovated and will be HUD approved upon completion.

The Chairperson asked Mr. Riggs if appellant would be granted a rental permit upon the Board approving the variance.

Mr. Riggs replied affirmatively.

Discussion over basement apartments.

Kelly Sauber noted that there are several properties nearby that had residential dwellings on the first floor and asked Mr. Riggs for an explanation.

Mr. Riggs stated that these properties were likely grandfathered in or had received a variance in the past.

Further discussion over basement apartments.

Joe Krause asked Mr. Riggs what would happen to the current tenants if the variance request was denied by the Board, as they would be living in an illegal rental unit.

Mr. Riggs confirmed that it would be an illegal unit.

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Ben Lachman asked the appellant about the doors on the property.

Appellant explained the uses of the different doors.

The Chairperson reminded the Board that this variance will run with the property, and that granting it will allow the first floor to be used as a residential dwelling indefinitely. The Chairperson then asked the appellant whether all other units in the building were HUD approved.

Appellant explained that only the two apartments that the Board is considering were HUD approved, but the basement apartment will be HUD approved when renovations are complete. Noted that experience with HUD has gone well and that further HUD cooperation is not out of the question for the future.

The Chairperson reminded the Board that HUD status is not necessarily something the Board can consider in its ruling. The Chairperson then read a letter of support from the property owners (Carpet One Floor and Moore) into the record.

On a motion by Ben Lachman, seconded by Kay Tousley, the Board moved to grant a variance from ACC 23.04.05 (A) (1) on 6 Pomeroy Road to allow a residential space on the ground floor in a B-3 Zone.

FINDINGS:

- 1.) EXCEPTIONAL CIRCUMSTANCES:** There are currently tenants residing in the property.
- 2.) HARDSHIP AND DIFFICULTY:** There are currently tenants residing in the property.
- 3.) PRESERVATION OF EQUAL PROPERTY RIGHTS:** Nearby properties have similar uses.
- 4.) MINIMUM VARIANCE:** Yes.
- 5.) ABSENCE OF DETRIMENT:** Yes.
- 6.) NOT OF A GENERAL NATURE:** Not of a general nature.

The Chairperson called for a vote: 4 votes for (Sauber, Carson, Tousley, Lachman) - 1 vote against (Krause). Motion approved.

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2. Case #22-11V 8 Pomeroy Road Zone B-3 Umbrella of Athens, LLC / appellant

Appellant is requesting a variance from ACC 23.04.05 (A) (1) to allow a residential space on the ground floor in a B-3 Zone.

On a motion by Kay Tousley, seconded by Joe Krause, the Board moved to grant a variance from ACC 23.04.05 (A) (1) on 8 Pomeroy Road to allow a residential space on the ground floor in a B-3 Zone.

The Chairperson called for a vote: 4 votes for (Sauber, Carson, Tousley, Lachman) - 1 vote against (Krause). Motion approved.

**3. Case #22-12V 75 East Stimson Avenue Zone B-3 North Fork Holdings, LLC –
Jacob Stauffer / appellant**

Appellant is requesting a variance from ACC 23.04.07 (A) (3) to allow a Drive In to be 130 ft from an R-1 zone.

The Chairperson calls on the Zoning Administrator to testify.

Mr. Riggs states that the existing building has been present and used as a restaurant with a drive through for several years (it was originally a Rax), prior to ACC 23.04.07 (A) (3) being established (also mentions this code is possibly being modified in the near future). Mr. Riggs also states appellant is tearing down existing structure and rebuilding, causing them to lose their existing legal nonconforming grandfather clause and they will now need a variance to continue to have a drive through at this location.

The Chairperson asks if this is the only hurdle the Sonic will experience to rebuild.

Mr. Riggs states that they also have some flood plain issues they will have to deal with, but as far the BZA is concerned this is the only issue they will have.

The Chairperson clarifies that this particular code did not exist when Rax was built, and when this code was established the current Sonic drive through was grandfathered. Mr. Riggs verifies that this is correct, stating the Sonic is currently a legal nonconforming use.

The Chairperson asks Mr. Riggs to expand on possible changes to the code, to which he replies that they are in the process of possibly changing the distance to which a drive through can be to an R-1 zone to 150 ft (currently 200 ft). Mr. Riggs points out that this particular situation still would not meet the code at that point, reminds board that this has not yet been approved.

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Kelly Sauber states the site is in front of a manufacturing facility and Jackie O's. Mr. Riggs states that is an M-1 zone and clarifies that the R-1 zone the property is less than 200 feet from is across the street.

Ben Lachman asks Mr. Riggs what the intent of ACC code 23.04.07 (A) (3) is-why is there a setback requirement for drive throughs?

Mr. Riggs replies that he believes this is due to noise from the drive through speakers, but also states that he has done studies with a decibel measure in other areas and finds that up to 100' away noise from drive through cannot be heard over traffic noise. Ben asks about lighting possibly being an issue as well. Mr. Riggs states light trespass is addressed in title 23, and that new LED lights likely will resolve that issue, but that this would be checked as well.

The Chairperson states there are no letters for or against variance, and calls on the appellant to speak.

Jacob Stouffer, Springfield, MO – Mr. Stouffer states he purchased this Sonic franchise location in 2016 on property leased from Tom Karr and has been unable to buy due to student housing issues. Appellant states the facility is at the end of its useful life and they would like to reinvest in the location. Appellant states location has been a Sonic for close to 20 years and now needs an investment and upgrade. Mr. Stouffer notes that there is a KFC catty-corner from the property, and Jackie O's behind it, and does not feel there would be any perceived prejudice towards them if the variance is approved as those affected have been living with the circumstance for all of their living memory. If the variance is not granted, Sonic would be stuck with a facility that could be renovated but they would be better off rebuilding and believes customers, employees, and the town would appreciate the new building.

The Chairperson asks appellant if they can adjust the plans to remodel instead of rebuilding.

Appellant states that making repairs to the existing building does not make sense economically.

The Chairperson muses that they occupied the former Rax building, but in other places Sonic is usually built uniform.

Appellant states that current design reflects the need for drive through service vs dine in – there will be no indoor dining, but they will have a patio out front. The drive through and possibly drive in parking spaces will be in the back.

Ben Lachman asks appellant to talk about noise and light pollution.

Appellant states that main speaker will be in back of building, and if the design allows for separate spaces they would aim the speakers away from the residential area. Agrees with Mr. Riggs' statement regarding LED lighting lessening light pollution.

Ben Lachman asks about expected traffic changes.

Appellant states current design should make drive through more efficient, traffic back up is not expected. Mr. Stouffer also states based on numbers from other locations that have been

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remodeled they should only experience a 20% increase in business so he does not foresee traffic being an issue.

On a motion by Joe Krause, seconded by Kelly Sauber, the Board moved to grant a variance from ACC 23.04.07 (A) (3) to allow a Drive In to be 130 ft from an R-1 zone.

FINDINGS:

- 1.) EXCEPTIONAL CIRCUMSTANCES: The property is an existing restaurant with legal nonconforming use. There are other properties with same circumstances nearby.**

Mr. Riggs adds that FEMA limits the amount that can be remodeled. They are only allowed to make improvements up to 50% of the current property value. Sonic would be required to raise the existing structure up to remodel for more than 50% of the value.

Ben Lachman asks what the scrape and rebuild would look like as far as FEMA grading requirements are concerned. Mr. Riggs explains that the rebuilt finished floor would need to be at least 1 foot above base flood elevation.

- 2.) HARDSHIP AND DIFFICULTY: Flood plain requirements if made to remodel existing building.**

- 3.) PRESERVATION OF EQUAL PROPERTY RIGHTS: Nearby properties have similar uses.**

- 4.) MINIMUM VARIANCE: Yes.**

- 5.) ABSENCE OF DETRIMENT: Yes.**

Ben Lachman reiterates concerns regarding noise pollution.

Discussion over noise.

Ben Lachman also notes that this area did have a problem with runoff and wonders how this will be affected by the new grading. Mr. Riggs states that this will help solve that issue.

- 6.) NOT OF A GENERAL NATURE: Not of a general nature.**

Discussion regarding development of city and noise pollution.

The Chairperson called for a vote: 4 votes for (Sauber, Carson, Tousley, Krause) - 1 vote against (Lachman). Motion approved.

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OTHER BUSINESS:

The Chairperson confirmed the withdrawal of Case 22-09V at 2 Dalton Avenue.

Approval of minutes from:

July 12, 2022: Approved by Lisa Carson, Kay Tousley, Ben Lachman.

On a motion by Kay Tousley, seconded by Ben Lachman, Chairperson Carson adjourned the meeting at 8:20 pm.

Lisa Carson, Chairperson

Date

David Riggs, Zoning Administrator

Date