

Board of Zoning Appeals

Minutes

January 10, 2017

Members present: John Golzy (Chairperson), Betty Hollow, Joan Kraynanski, Kay Tousley, Edward Baum (alternate).

City officials present: Rick Sirois (Zoning Administrator).

The meeting was called to order at 7:00pm in City 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 then swore in, under oath, those intending to give testimony.

Case #16-13V 2065 East State Street Zone B-3 DaNite Sign Co., appellant

Appellant is requesting variances from ACC 23.03.13(I)(4)(d) to allow a free-standing sign with two-hundred fifty-four (254) square feet in area, where fifty (50) square feet in area is the maximum allowed, and from ACC 23.03.13(I)(5) to allow a free-standing sign sixty feet, seven and three fourths inches (60', 7 3/4") in height, where thirty feet (30') in height is the maximum allowed.

The Chairperson noted that this case has no representative present. Mr. Baum moved to table this case until next meeting, seconded by Ms. Hollow. The Board voted 5-0 to table this case.

**Case #16-15V 41 Second Street Zone R-1 Deborah Anderson,
Appellant**

Appellant is requesting variances from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow an addition to a building with a right side setback of five feet, three inches (5'3") where eight feet, two inches (8'2") is the minimum requirement, and to allow maximum lot coverage of thirty-nine percent (39%) where thirty percent (30%) is the maximum allowed.

The Chairperson called on the appellant to testify.

Deborah Anderson addressed the Board. Ms. Anderson referenced letters of support from neighbors for the project, and submitted two more of these to the Board at the meeting.

Ms. Anderson stated that she was close to the minimum 20 feet side setback requirement for the property. She also presented photographs of the building to the Board. Ms. Anderson said that she has an awkward division of her property, as others in this neighborhood have.

Ms. Anderson said the new construction was necessary due to the deterioration of what is underneath it, and said she did not know she would need a variance. She said the added roof makes the walkway safer, as she has ice problems and water leakage there. Ms. Anderson said that, as for lot coverage, she does own a lot at the back of her property. She said she also believes the addition enhances the property.

The Chairperson wanted to clarify that the appellant would not be adding more area to the addition. Ms. Anderson confirmed that.

The Chairperson asked if anyone wanted to speak in favor of the variance.

Michael McSteen (32 Second Street) addressed the Board. Mr. McSteen read aloud a letter supporting the variance. Mr. McSteen said the new structure would add to the neighborhood, and that the appellant told him that the contractor told her that the project would meet City code.

Eric Lee (51 Madison Avenue) addressed the Board. Mr. Lee said that he does not know the appellant, but thinks she has put together a good case. He said the contractor's comments has caused an undue hardship, and that the appellant meets the other findings.

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 many City properties do not meet minimum size or setback requirements. He said that with a lot this size, one needs to be flexible in terms of requirements.

On a motion by Ms. Hollow, seconded by Ms. Tousley, the Board moved to grant variances to the property at 41 Second Street from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow an addition to a building with a right side setback of five feet, three inches (5'3") where eight feet, two inches (8'2") is the minimum requirement, and to allow maximum lot coverage of thirty-nine percent (39%) where thirty percent (30%) is the maximum allowed.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** The width and size of the lot.
- 2.) **HARDSHIP AND DIFFICULTY:** Without the addition, the appellant will have the hardship of rain pouring in. It is a small lot.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Others with this size side yard would probably have to come to the Board.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

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

Case #17-01V Lot 1703 – Ring Street Zone R-1 Michael Rinaldi-Eichenberg, appellant

Appellant is requesting a variance from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow construction of a building with a rear setback of fifteen feet (15’), where thirty feet (30’) is the minimum requirement.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator compared previous cases for this property. He said Case #2005-02V was approved for a rear setback of ten feet, and Case 2016-03V was withdrawn, due to complications with placing the parking over a sewer line.

The Chairperson called on the appellant to testify. Michael Rinaldi-Eichenberg addressed the Board. Mr. Rinaldi-Eichenberg said that he intends to build an owner-occupied house on the lot. He said that the lot is small and triangular, and that there is a sewer line that runs through the front corner of the lot. Mr. Rinaldi-Eichenberg said that he spoke with Andy Stone of the City Engineering and Public Works Department, and presented the Board with a document indicating that the sewer line needs to be replaced. Ms. Hollow suggested that the appellant wait until the line is replaced before building his house. Mr. Rinaldi-Eichenberg said that there are flags marking the line on the lot, and that he was told that if his project stayed behind those flags, he would not be in the way.

Mr. Rinaldi-Eichenberg said the rear setback is against a City alley, so he would not be encroaching on another property. He noted the size and shape of the lot, saying it was difficult to meet bulk controls. Mr. Rinaldi-Eichenberg also noted that a previous variance for this lot approved a ten-foot rear setback.

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

Eric Lee addressed the Board. Mr. Lee said the shape of the lot is an undue hardship. He also stated that he has spoken with the City of Athens Fire Department Chief, who said that they would not use the City alley for emergency purposes. Mr. Lee said that without a variance, there were no equal property rights for the appellant to use the lot.

The Chairperson called on anyone wanting to make general comment about, or speak against the variance.

William Dombroski (17 Ring Street) addressed the Board. Mr. Dombroski said that the lot in question is not a separate lot, but belongs to the house next to it. He said that without the lot in question, that house would be landlocked, with no access to the street. Ms. Hollow asked how the current owner has a deed to that lot. Mr. Dombroski said that she should ask the appellant.

Mr. Dombroski said a house on the lot in question will act as a dam for water draining from that hill.

The Chairperson called on the appellant for rebuttal. Mr. Rinaldi-Eichenberg said that he spoke with neighbors about the storm drain located there, and that they indicated that it was not a

big issue to go through these steps. He said that, as for landlocking the house lot there, it is a common thing for a neighbor to grant an easement for access. Mr. Rinaldi-Eichenberg said that if adding to the existing sewer line would cause problems for his neighbors, he would want to be a good neighbor and possibly hold off. He said that if he gets the variance, he would want a concrete answer from Mr. Stone about when the line would be replaced.

Ms. Kraynanski asked if the appellant purchasing the property was based on getting the variance. Mr. Rinaldi-Eichenberg said that was correct. Ms. Hollow said the house would be built in a big ditch that handles water run-off from the surrounding area. Mr. Rinaldi-Eichenberg said the house would not be built on the lowest part of the lot.

Mr. Lee presented photographs of the area taken during a rainstorm to show the amount of run-off. The Chairperson asked Mr. Dombroski if he had ever seen it flood there. Mr. Dombroski said that he has seen that lot totally underwater. Mr. Lee said that in his time there he has not seen it flood. Mr. Lee also presented the Board with a diagram of the lots he owns at the site.

The Chairperson closed the floor for discussion.

Ms. Kraynanski asked about parking on the plans being placed in the front setback. Ms. Hollow and Mr. Baum suggested that since the variance request is for setback only, that the appellant can work out any parking placement problems with the Code Enforcement Office, and possibly come before the Board with another variance request.

On a motion by Mr. Baum, seconded by Ms. Tousley, the Board considered to grant a variance from ACC 23.10.01, Table A, Schedule of Bulk Controls, to allow construction of a building with a rear setback of fifteen feet (15'), where thirty feet (30') is the minimum requirement.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** The shape of the lot, though there are other unusually shaped lots in the area.
- 2.) **HARDSHIP AND DIFFICULTY:** Anyone building on this property will have hardships that are self-imposed. This seems to be the only way to develop this lot.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** He may block his neighbor's access.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** There are reports of flooding, so there is detriment.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Baum, Golzy, Tousley – yes. Hollow, Kraynanski – no. Motion approved 3-2; variance granted.

Appellant is requesting a conditional use permit to operate a bed-and-breakfast business in his home.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator referenced two other bed-and-breakfast conditional uses that were granted. Ms. Kraynanski asked about the proposed ordinance for bed-and-breakfast use not being codified yet and if it was enforceable. The Zoning Administrator said that it was not. Ms. Kraynanski noted that a bed-and-breakfast permit must be filled out. The Zoning Administrator said his office is working on this type of permit to be used.

The Chairperson called on the appellant to testify.

Ibriham Alassaf addressed the Board. Mr. Alassaf said that he lists his bed-and-breakfast solely through the internet site Airbnb. He said that he has one extra room in his house, which he has rented to various types of people before receiving a cease-and-desist order from the Code Office. He said his place received high ratings from guests. He also stated that he had spoken with his next-door neighbor, who said she was not aware that he was running a bed-and-breakfast.

Mr. Alassaf said that the reason he wants to run such a business is to give visitors to Athens have a more pleasant experience, as local hotels are packed on special weekends. Mr. Alassaf said that he does not provide breakfast for his guests. He said that he will have the required parking, so there will not be congestion there. He also noted that there are rental properties in this townhouse neighborhood.

Ms. Kraynanski asked the appellant if he was aware that Airbnb requires those listing properties to comply with all local ordinances. Mr. Alassaf answered that he was aware of this.

The Chairperson called on anyone wanting to speak in favor of the conditional use request. No one came forward. The Chairperson called on anyone wanting to make general comment about the request.

Eric Lee addressed the Board. Mr. Lee said that if the appellant has met City Code requirements for such a use, it should be granted.

The Chairperson called on anyone wanting to speak in opposition of the request.

David Mott (address not given) addressed the Board. Mr. Mott stated that he was the attorney representing the Westfield Place Homeowners Association. He said the Association opposes the bed-and-breakfast request. Mr. Mott noted that each residence is subject to deed restrictions, including prohibiting commercial use for that property, except for professional business, such as architects and engineers who commonly work from their home. Mr. Mott acknowledged that the deed restriction is not a City Code issue. He said the Association would pursue a permanent injunction against the appellant should he continue the use.

Kelly Davidson (3 Westfield Place) addressed the Board. Ms. Davidson said that she did

notice cars next door at the appellant's residence, but thought they were friends of the appellant. She said she became concerned when she heard from the appellant what he was doing and the City's cease-and-desist order. Ms. Davidson said that she does not feel comfortable living next to a bed-and-breakfast, and she is concerned with what strangers may bring into the appellant's house, such as rodents or firearms. She said that she opposes the conditional use permit.

Linda Rice (19 Westfield Place) addressed the Board. Ms. Rice said that she opposes the conditional use permit due to the deed restrictions of this subdivision. She added that it is an interactive neighborhood that tries to add quality to the area.

The Chairperson called on the appellant for rebuttal. Mr. Alassaf said that he has not had any guests in his house since the cease-and-desist order. He noted that the house across the street from him (2 Westfield Place) is a rental property that is not kept in good shape.

Mr. Baum noted that this neighborhood is a planned unit development, and that the harmony of that area is different than that of a regular R-3 neighborhood.

Mr. Alassaf said that if the Homeowners Association is going to litigate this issue, then he will withdraw his appeal to the Board. The Board accepted the withdrawal.

OTHER BUSINESS:

--*Disposition of minutes from December 13, 2016 meeting.* Mr. Baum moved to approve the minutes, seconded by Ms. Hollow. Minutes approved 5-0.

The meeting was adjourned at 8:42pm.

John Golzy, Chairperson

Paul Eschenbacher, secretary