

Board of Zoning Appeals

Minutes (amended)

September 9, 2014

Members present: John Golzy (Chairperson), Lisa Carson, 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 7:01pm in Council Chambers, third floor of City Hall. The Chairperson read a statement about the policies and procedures of the Board of Zoning Appeals ~~was shown~~. He noted that with the absence of two full-time members, Mr. Baum and Ms. Soltow would be voting members of the Board for this meeting. The Chairperson then swore in, under oath, those intending to give testimony.

**Case #14-11V 10 South Green Drive Zone R-3 Athens River Gate LLC,
appellant**

Appellant is requesting a variance from ACC 23.10, Table A, Schedule of Bulk Controls, to allow construction of a multi-unit apartment building with total lot coverage of seventy-nine percent (79%) where sixty percent (60%) is the maximum allowed.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator noted that this is a new application for this property. He said the difference from the previous application is that the top floor was chopped off, and this new design meets Code requirements for parking, lot size and square footage per bed. The Zoning Administrator also noted that, in reviewing the numbers for the design, the actual total lot coverage would be 77.5%.

The Chairperson noted the approval of Athens Fire Chief Robert Rymer for the new design.

The Chairperson called on the appellant to testify.

David Fisher (attorney for appellant, Kephart Fisher LLC, 207 North Fourth Street, Columbus, Ohio 43215)) addressed the Board. Mr. Fisher said that his client had noted the objections of the Board to the previous design, and changed the plan. He presented a comparison between the two designs, and noted the first design called for 81.5% total lot coverage. He also presented an economic comparison between the two plans.

Mr. Fisher indicated that the City of Athens Comprehensive Plan lists the ideas that Ohio University will continue to expand, that the Mill Street area is listed for high-density development, and that new projects should improve the appearance of, and reduce nuisance for the City. He stated that the appellant's new design meets with those principles of the Comprehensive Plan.

Mr. Fisher said that the project would include pervious pavement and grass pavers, as these would help in storm water management. He said this area would be available as required parking space if needed. Mr. Fisher also indicated that in studying parking at the neighboring Riverpark Towers complex, parking use was estimated to be 80% of available spaces.

Mr. Fisher said that with all the green features indicated in the current design, greenspace could be up to 40% of the site. He also said that the City landscaping requirement is for trees planted to have at least a 1.5-inch caliper, but that the appellant would be willing to plant 2-inch or 4-inch caliper trees to make high quality greenspace sooner. He also noted that the planned sidewalk design would add 2.8% lot coverage, and that the entranceway would be large due to the building being in the flood plain.

Mr. Fisher reviewed the letter submitted to the Board about the six findings needed for the variance. He noted the concerns about parking, and that the appellant could have sought a parking variance, but that the design will give more parking than will be used.

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

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

Kenneth Ryan (18 West State Street) addressed the Board. Mr. Ryan said that he was an attorney representing a group of commercial real estate owners within the City of Athens. He stated that the appellant has not fully addressed directives of the variance findings. He said that being in the flood zone as a hardship is not unique, nor is the shape and size of the lot. Mr. Ryan said the appellant has the resources to make the project fit the total lot coverage requirement of 60%. He indicated that granting the variance would give the appellant special privilege, and that it would provide a blueprint on how to get around zoning laws. Ms. Carson asked if Mr. Ryan **if the people he represented** had any objection to the project if it met the total lot coverage requirement. Mr. Ryan said that he **they** would not object.

The Chairperson called on the appellant for rebuttal.

Mr. Fisher said that he disagrees with Mr. Ryan's statement that this is not a special situation. Mr. Fisher said the current plan acknowledges the City Comprehensive Plan. He added that the only blueprint provided by this plan is the quality of the project. Mr. Fisher asked the Board to consider the competitive aspect of the objection, in that other developers and rental owners would not want this project. He reiterated that he considers this lot area unique.

Ms. Kraynanski asked about the different appellant name applying for this variance from the previous case (#14-04V). Mr. Fisher said that the appellant is now the owner of the property, and a consortium of investors was created for this site and project. Ms. Kraynanski asked about how long the appellant would hold onto the property. Mr. Fisher said that they were long-term players, and that they would have **ownership** for 10 to 20 years.

The Chairperson closed the floor for discussion.

The Chairperson asked the Zoning Administrator about the proposed grass pavers. The Zoning Administrator said that storm water planners love them. He said a problem with them is to figure out how to monitor their use. The Zoning Administrator said the grass pavers were counted as part of the total lot coverage, so that even if they were paved over in the future, they had already been counted as paved area.

On a motion by Mr. Baum, seconded by Ms. Kraynanski, the Board considered to grant a variance from ACC 23.10, Table A, Schedule of Bulk Controls, to allow construction of a multi-unit apartment building with total lot coverage of seventy-seven point five percent (77.5%) where sixty percent (60%) is the maximum allowed, with the condition that four-inch (4") caliper trees be part of the process.

FINDINGS:

- 1.) **HARDSHIP AND DIFFICULTY:** The implementing of the Code would create a hardship to the appellant.
- 2.) **EXCEPTIONAL CIRCUMSTANCES:** Being in the flood plain makes it exceptional. Being in the flood plain may not be exceptional. It is a unique location.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Other properties have similar situations.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** No evidence.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Baum – yes, Soltow – yes, Carson – yes, Kraynanski – yes, Golzy – yes. Motion approved 5-0; variance granted.

OTHER BUSINESS:

--Disposition of minutes from August 12, 2014 meeting. Ms. Kraynanski wanted wording changed in the section for Case #14-08V to read that the secretary "questioned" whether the Board needed the appellant's permission to split variance requests, instead of "suggested," and that Ms. Hollow's comment about the Board splitting variances in the past to be included. Mr. Baum then moved to accept the August 12, 2014 minutes as amended, seconded by Ms. Kraynanski. Motion approved 5-0.

The meeting was adjourned at 8:17pm.

John Golzy, Chairperson

Paul Eschenbacher, secretary