

Board of Zoning Appeals

Minutes

February 9, 2021

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

City officials present: David Riggs (Zoning Administrator) and The Government Channel

The meeting was called to order at 7:00 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 #21-01V 9 Atlantic Avenue Zone: B-2 Heather Hill

Appellant is requesting a variance from ACC 23.04.05 (A) (1) to allow a rental on the first (1st) floor of a B-2 Zone, where Residential Use is only permitted on the second story and above. Requesting a variance from ACC 23.10.01 Table B to allow zero (0) parking spaces, where three (3) are required.

The Chairperson called on Zoning Administrator to testify.

Mr. Riggs explained this property was previously a rental unit until 2009. The property was moved to The City's blight list and the appellant purchased the property and is working to improve the property and asking for a variance to allow zero (0) parking spaces and make a rental on the first floor.

Chairperson called upon the appellant, Heather Hill. They purchased the property with the intention to make it a rental and have been fixing the property up.

Chairperson mentioned the area is Zoned B-2 and the street Atlantic Avenue which is a narrow street, but has several other residential homes with driveways. Mr. Golzy asked the appellant if she would be able to provide 3 parking spots within 250 feet for the renters.

The appellant mentioned to the right of the house, there used to be a brick driveway that has become overgrown. They plan to re-gravel this area and remove some trees to provide two (2) on-site parking space.

Chairperson called upon the board for questions.

Mr. Delach asked how far the old brick driveway went.

Appellant believes the driveway would allow for two, but she is not certain. Ms. Hill mentioned the use of a neighbor's parking spot to provide a total of three (3) parking spaces.

Mr. Golzy called upon Mr. Riggs for guidance regarding the parking spaces mentioned.

Mr. Riggs said that the board member who will make a motion should include the number of minimum parking spaces be included as part of the recommendation.

Joe Krause mentioned that the Appellant should state the amount of parking spaces she will provide and if the renters will be using the neighbor's parking spot, they would need to get something in writing from the neighbor.

Chairperson called for any questions for the Code Office or the Appellant from the Board Members.

Mr. Riggs mentioned that in the past, it had been a three (3) bedroom rental that was grandfathered for the parking. The rental fee was not paid in 2010 and the owner lost the grandfathered parking clause which stated that the owner did not need to provide parking for the rental.

Chairperson asked for anyone in favor, general, or opposition of the variance to speak. There were none.

Mr. Golzy closed the floor to discussion.

On a motion by John Gutekanst, seconded by Kay Tousley, the Board moved to grant the property at 9 Atlantic Avenue a variance from ACC 23.04.05 (A) (1) to allow a rental on the first (1st) floor of a B-2 Zone, where Residential Use is only permitted on the second story and above. Requesting a variance from ACC 23.10.01 Table B to allow two (2) parking spaces and one letter from neighbor allowing the use of one (1) parking space, where three (3) parking spaces are required.

Findings:

- 1.) **Exceptional Circumstances:** Area is a B-2 Zone, but Atlantic Avenue is residential and has had several rentals for many years.
- 2.) **HARDSHIP AND DIFFICULTY:** Yes, first floor would be left unoccupied waiting for a business to go in.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes, other properties on Atlantic Avenue are used as rentals.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** No.

The Chairperson called for a vote: Yes - Tousley, Yes – Carson, Yes - Gutekanst, Yes – Krause, and Yes – Golzy. Motion approved 5-0; variance granted with Appellant providing two (2) parking spaces and written permission for use of neighbor's parking for one (1) space, for a total of three (3) required parking spaces.

Case #21-021 750 East State Street Zone: B-3 Mithril Enterprises, LLC

Appellant is requesting an interpretation from the Board of ACC 23.04.07 B-3 (A) and a determination of ACC 23.04.07 B-3(A)(3) on the two hundred (200) feet setback condition for drive-throughs or drive-ins that are not part of, or otherwise directly associated with, an eating or drinking establishment or place.

Chairperson clarified that the Board received a number of emails from the neighborhood that were opposing a variance or permit. Due to a letter that was sent to the neighbors from the Appellant, the neighbors thought this case being heard tonight was on a variance and not to interpret the code. Mr. Golzy reiterated the case tonight would only be for the Board to interpret the code. The letters provided will not be read during the meeting, but will be available and in the files upon request.

Chairperson asked Mr. Riggs for background on this case.

Mr. Riggs mentioned The Code Office has worked with the BZA on at least 28 interpretation cases over the years (1995 – 2021). The power of the BZA to provide interpretations to the code is part of the BZA powers granted in **Title 23.07.03 Powers of the Board: Appellate Jurisdiction**. This title provides for the following three (3) powers assigned to the Board:

- (A) Administrative Review
- (B) Variances
- (C) Reversal of orders

Interpretation cases are part of Administrative Review. This allows the Board, among other things, where it is alleged by the appellant that an error has occurred, to hear and decide if a correct determination has been made by the Zoning Administrator in the enforcement and interpretation of the provisions of the zoning code.

A decision from the BZA should be in the form: the interpretation of the provision of the code made by the Zoning administrator was or was not correct.

Chairperson asked Mr. Riggs if a Zoning Permit for a General Retail Use was approved for the property 750 E. State St.

Mr. Riggs mentioned a Use Permit was approved with Code 23.04.07 – Principal permitted Uses – which includes any use permitted and regulated in a B-2 or B-2D Zones. Mr. Riggs said that the original application mentioned retail sales and the Code Office interpreted that it would be an eating and drinking establishment. That application was denied per Code 23.04.07 (A) Principal permitted uses: Any use permitted and as regulated in the B-2 and B-2D Zones, except as hereinafter modified in the following general conditions:

(3) Eating and drinking establishments—Drive-in, drive-through, and eating and drinking places, provided the principal building shall be at least 200 feet from any R-1 or R-2 Zone.

Chairman called upon any questions for Mr. Riggs. There were none.

Chairperson called on Mr. Lee who is representing the appellant.

Mr. Lee stated they would like an interpretation on code 23.04.07 (A) (3). He mentioned this code had been revised by City Council twice maybe three times in an effort to clarify the intent, but he still finds it difficult to interpret. The applicant's argument is based on the plain language of that section and context of it that the restriction only applies with eating and drinking establishments. The proposed use for a convenience store was approved and the applicant plans to open a retail convenience store, but their desire is to include a drive through.

Chairperson asked what would be sold in a general retail store.

Mr. Lee mentioned the store intends to sell pre-packaged snacks and drinks. They will not be preparing food on the premises.

Ms. Carson mentioned she believed the code referred to drive through or drive-in establishments, sit down restaurants and does not include something like a convenience store.

Mr. Lee mentioned the reason for the interpretation is to clarify the definition of a drive through or drive-in that is not defined in the code.

Mr. Golzy called upon anyone that would like to speak.

Mr. Zielinski mentioned the letter given to neighbors mentioned the phrase "coffee being served". He wondered if that meant coffee would be prepared and served.

Mr. Lee said they will not be serving / preparing coffee.

Chairperson asked if there was anyone else that would like to speak.

Ms. Walker asked if the Board agreed with the Appellant, how would this change the business plan.

Mr. Riggs explained that if the Board agreed with the Appellant, no variance would be needed and the Appellant would need to reapply with the Code Office.

Chairman closed the floor and opened discussion with the Board Members.

Mr. Golzy called upon Mr. Riggs to explain how historically the wording of the code had been discussed.

Mr. Riggs mentioned that the code had been rewritten two other times.

On a motion by Lisa Carson, seconded by Kay Tousley, the Board will provide a decision on the Interpretation based on ACC 23.04.07 B-3 (A) and a determination of ACC 23.04.07 B-3(A)(3) on the two hundred (200) feet setback condition for drive-throughs or drive-ins that are not part of, or otherwise directly associated with, an eating or drinking establishment or place. A Yes vote would mean, the Board believes the Code Office and Mr. Riggs's Interpretation of the code was wrong. A No vote would mean, the Board supports the Interpretation of the Code Office and Mr. Riggs.

The Chairperson called for a vote: No - Gutekanst, Yes – Carson, Yes - Tousley, No – Krause, and No – Golzy. Motion 3-2; the Interpretation was correct.

OTHER BUSINESS:

--Disposition of minutes from January 12, 2021 meeting. On a motion from Ms. Tousley, seconded by Ms. Carson, the Board moved to accept the minutes of the January 12, 2021 meeting as presented, 6-0.

--Organization meeting. The February meeting to elect or re-elect a Chairperson. On a motion from Mr. Gutekanst and seconded by Ms. Tousley, the Board members re-elected Mr. Golzy in the position, Chairperson, 6-0.

The meeting was adjourned at 9:06.

John Golzy / Kley 4/14/2021
John Golzy, Chairperson Date

Kerri Yake 4/14/2021
Kerri Yake, Secretary Date