

Board of Zoning Appeals

Minutes

August 14, 2018

Members present: John Golzy (Chairperson), Edward Baum, Lisa Carson, John Gutekanst, Kay Tousley, Jessica Kopelwitz (alternate).

City officials present: Rick Sirois (Zoning Administrator), Paul Eschenbacher (secretary).

The meeting was called to order at 7:01pm 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 #18-18V 310 West Union Street Zone B-3 Xpressive Graphix,
Appellant**

Appellant is requesting a variance from ACC 23.03.13(I)(1)(i) to allow a wall-mounted sign with a left side setback of thirty inches (30”) where fifty inches (50”) is the minimum requirement.

The Chairperson called on the secretary to testify. The secretary explained the part of the sign ordinance having to do with this case.

The Chairperson called on the appellant to testify.

Robin Stoneking (Xpressive Graphix representative) addressed the Board. Ms. Stoneking asked that the Board grant the variance, and mentioned that another sign may be put up in the same area.

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

The Chairperson closed the floor for discussion.

On a motion by Mr. Gutekanst, seconded by Mr. Baum, the Board moved to grant a variance to the property at 310 West Union Street from ACC 23.03.13(I)(1)(i) to allow a wall-mounted sign with a left side setback of thirty inches (30”) where fifty inches (50”) is the minimum requirement.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** There are side-by-side tenants for the building. The sign and building does not abut another building.
- 2.) **HARDSHIP AND DIFFICULTY:** The use of the space for the sign.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes.

- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes—Baum, Carson, Golzy, Gutekanst, Tousley. No—no one. Motion approved 5-0; variance granted.

**Case #18-19CV 7 North Congress Street Zone R-3 T. Michael Corathers/RVC
Architects, appellant**

Appellant is requesting a conditional use permit, under ACC 23.04.03(C)(3), for a residential health care facility, and a variance from ACC 23.10, Table A, Schedule of Bulk Controls, to allow an addition to a building with a rear setback of fifteen feet, two and one-half inches (15'2 ½") where forty feet (40') is the minimum requirement.

The Chairperson called on the appellant to testify.

T. Michael Corathers (131 West State Street) addressed the Board. Mr. Corathers said that The Gathering Place wants to extend its kitchen. He said that the area to be used is hidden by shrubbery and a retaining wall. Mr. Corathers noted that they could not expand into the front or side yards.

Mr. Corathers stated that the parking in the adjacent lot cannot be deed-restricted, but they intend to have a 20-year lease for the parking spaces.

Mr. Baum asked about the width of the extension. Mr. Corathers said that it would be 15 feet, six inches. Mr. Gutekanst asked if there would now be more employees. Mr. Corathers said that there would not be more, but that the extension of the kitchen would help better serve the clients, as the current kitchen is now cramped. The Chairperson asked about the shed on the property. Mr. Corathers said that they were not touching it.

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

Mary Kneier (Executive Director of The Gathering Place) addressed the Board. Ms. Kneier said that this facility has been at this address since 1976, and that they have owned it since 1986. She noted that they have been renovating the building, spending \$100,000 so far.

Ms. Kneier said that the facility is not residential, but that they do provide four meals a week to clients, and teach about nutrition.

The Chairperson called on anyone wanting to make general comment about the variance.

Ginger Schmalenberg (Resource Director of The Gathering Place) addressed the Board. Ms. Schmalenberg said that facility bought the parking lot next door and 34 West Washington Street, and that the deeds cannot be separated. She said that they intend to use the lot for their parking.

The Chairperson called on anyone wanting to speak against the variance. No one came forward.

The Chairperson closed the floor for discussion.

The Chairperson suggested that, instead of a conditional use permit for a residential health-care facility, it would be more appropriate to ask for such a permit for a clinic.

On a motion by Mr. Baum, seconded by Ms. Tousley, the Board moved to grant to the property at 7 North Congress Street a conditional use permit, under ACC 23.04.03(C)(4), for a clinic, and a variance from ACC 23.10, Table A, Schedule of Bulk Controls, to allow an addition to a building with a rear setback of fifteen feet, two and one-half inches (15'2 ½") where forty feet (40') is the minimum requirement.

FINDINGS FOR CONDITIONAL USE PERMIT [ACC 23.07.02(E)(1)(2)(3)]

- 1.) **USE PERMITTED IN ZONE:** Yes.
- 2.) **INDIVIDUAL CASE:** Yes.
- 3.) (a) **COMPLIES WITH CITY REGULATIONS:** Yes, except for rear setback, which is included as variance request in this case.

(b) **APPROPRIATE AND NOT DETRIMENTAL:** Yes.

(c) **PARKING INGRESS AND EGRESS:** Yes.

The Chairperson called for a vote: Yes—Baum, Carson, Golzy, Gutekanst, Tousley. No--no one. Motion approved 5-0; conditional use granted.

FINDINGS FOR VARIANCE:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** It is exceptional in use.
- 2.) **HARDSHIP AND DIFFICULTY:** Apparent need for bigger kitchen.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes.
- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes—Baum, Carson, Golzy, Gutekanst, Tousley. No—no one. Motion approved 5-0; variance granted.

Appellant is requesting a variance from ACC 23.10, Table A, Schedule of Bulk Controls, to allow a duplex with lot size of five thousand four hundred sixty-four (5464) square feet where seven thousand (7000) square feet is the minimum requirement, a right setback of seven feet (7') where eight feet (8') is the minimum requirement, and a front yard setback of seventeen feet (17') where twenty-five feet (25') is the minimum requirement.

The Chairperson recused himself from hearing this case, and said Ms. Kopelwitz will be a voting member of the Board for this case.

The Chairperson called on the secretary to testify. The secretary noted that the footprint of the building will not change, but that it is the change of use which causes the requirement for conformity with bulk controls.

Mr. Baum asked about this B-1 zone being bordered by an R-1 zone. The secretary noted that there had been a recent zoning change on the corner of Madison Avenue and East State Street to R-3.

The Chairperson called on the appellant to testify.

Tina Jeffers addressed the Board. Ms. Jeffers said that 260 ½ East State Street is on a very quiet street. She said that the inside of this house is being renovated, and that she plans to replace stairs on the site. Ms. Jeffers stated that she has four parking spaces there.

The Chairperson asked if the two proposed units will have no internal connection. Ms. Jeffers confirmed this. Ms. Kopelwitz asked if the previous tenants used both floors in the building. Ms. Jeffers said that they had done so.

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

The Chairperson closed the floor for discussion.

On a motion by Mr. Baum, seconded by Ms. Carson, the Board moved to grant a variance to the property at 260 ½ East State Street from ACC 23.10, Table A, Schedule of Bulk Controls, to allow a duplex with lot size of five thousand four hundred sixty-four (5464) square feet where seven thousand (7000) square feet is the minimum requirement, a right setback of seven feet (7') where eight feet (8') is the minimum requirement, and a front yard setback of seventeen feet (17') where twenty-five feet (25') is the minimum requirement.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** The lot is smaller than the current standard, and creates a hardship.
- 2.) **HARDSHIP AND DIFFICULTY:** The lot is smaller than the current standard, and creates a hardship.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** Yes, in B-1/R-3 zone.

- 4.) **MINIMUM VARIANCE:** Yes.
- 5.) **ABSENCE OF DETRIMENT:** Yes.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes—Baum, Carson, Golzy, Gutekanst, Tousley. No—no one. Motion approved 5-0; variance granted.

Case #18-21V 220 East State Street Zone R-1 Davis Kramer, appellant

Appellant is requesting a variance from ACC 23.04.01 to allow a bed-and-breakfast in an R-1 zone where such use is not permitted, and from ACC 23.10, Table B, Off-Street Parking Requirements to allow a bed-and-breakfast with two (2) parking spaces where five (5) parking spaces are the minimum requirement.

The Chairperson called on the appellant to testify.

Davis Kramer addressed the Board. Ms. Kramer presented documents of support from neighbors about the variance. She said she has consulted with neighbors about the idea of a bed-and-breakfast at this site, and noted their concerns about noise and parking. Ms. Kramer said that one or two more parking spaces could be added behind the house.

Ms. Kramer said that potential patrons will be identified, including specific information about them. She said that she wanted to try to have a minimum age of 25 for patrons, and that the patrons will be personally informed of the rules for the house. Ms. Kramer said the house would be rented on weekends. She added that cameras and an in-town property manager will help supervise the site.

Ms. Kramer said that she wants to contribute to the betterment of the community and preserve the historical integrity of the neighborhood. She also said that this would be the best use of the house.

The Chairperson asked about having five bedrooms in the house. Ms. Kramer said that they want to rent only three of the bedrooms, and that she is not trying to pack the house.

Mr. Baum asked if the appellant had spoken to City Council about this. Ms. Kramer said that the City Code had been recently rewritten concerning bed-and-breakfast use. The Chairperson asked about the proposed added parking. Ms. Kramer said that she has an approved curb cut for the side yard, but would only put parking in that area as a last resort. The Chairperson noted that the variance request could be rewritten to have three parking spaces and three guests.

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

Joyce Mullins (47 Briarwood Drive) addressed the Board. She read aloud a letter submitted to the Board indicating her support for the variance.

Susan Mitchell (191 East State Street) was sworn in, under oath, and addressed the Board. Ms. Mitchell said if the bed-and-breakfast is allowed, it will make the neighborhood

more beautiful and will respect the historical integrity of the area. She stated that allowing this bed-and-breakfast may lead to others fixing up their properties to do so as well. Ms. Mitchell said that if there are any problems with this use, the house can be checked and the variance reviewed. She stated that she does not want this part of East State Street to wind up looking like the houses along the first block of this section of the street.

The Chairperson asked if this approved variance would open the gate to other bed-and-breakfast sites. Ms. Mitchell said that it could do so, and that she would be comfortable with it.

The Chairperson called on anyone wanting to make general comments about the variance. No one came forward.

The Chairperson called on anyone wanting to speak against the variance.

Jack Stauffer (69 Elmwood Place) addressed the Board. Mr. Stauffer said that the R-1 neighborhood should be maintained. He said this area had previously been zoned R-2, and was changed to R-1 to control density. Mr. Stauffer noted the number of hotels and motels in town.

Mr. Stauffer said there are other areas in town that allow bed-and-breakfast use, and that the R-1 zone is a sacred area. He said he was concerned about transient traffic and rowdy guests. Mr. Stauffer said approval of the variance would take away neighbors' property rights for the sake of a dollar.

Mr. Stauffer said there would be no fire protection, and that the City Code Enforcement Office is too understaffed and overworked to check these places.

Judith Rhue (218 East State Street) addressed the Board. Ms. Rhue said the appellant had spoken to her about the variance request, and that Ms. Rhue had concerns. She stated that parking is a problem along this part of the street. Ms. Rhue said that they may rent the place on weekends, but that means no one will be there during the week. She indicated that she was worried about who would contact the Kramers about problems there and if the guests would be staying without supervision. Ms. Rhue added that she was concerned about the swimming pool on the lot that is not supposed to be used, but could be used.

The Chairperson asked about the house becoming a regular rental property. Ms. Rhue stated that would be an implicit threat, but it is not worth approving of a bed-and-breakfast use.

The Chairperson called on the appellant for rebuttal.

Ms. Kramer said that the pool is grandfathered for use. She added that there is a cover to the pool that requires a special tool to open. Ms. Kramer said that they cannot leave the house empty and that they are not abandoning it. She said that they wish to generate revenue to fix up the house. Ms. Kramer said that anyone can have a rental property, but that she does not want that here. She said that someone will always live there.

Mr. Gutekanst asked the appellant if she has applied to have the house as an historical building. Ms. Kramer said that the neighborhood has been declared an historical district, and that she understood this house to be part of that. She added that she does not want rezoning for this area.

The Chairperson referenced other letters presented to the Board supporting this variance. The Chairperson closed the floor for discussion.

On a motion by Ms. Carson, seconded by Ms. Tousley, the Board moved to grant variances to the property at 220 East State Street from ACC 23.04.01 to allow a bed-and-breakfast in an R-1 zone where such use is not permitted, and from ACC 23.10, Table B, Off-Street Parking Requirements to allow a bed-and-breakfast with two (2) parking spaces where five (5) parking spaces are the minimum requirement.

FINDINGS:

- 1.) **EXCEPTIONAL CIRCUMSTANCES:** No. It can be used as a residence.
- 2.) **HARDSHIP AND DIFFICULTY:** No. It can be used as a residence.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** No. It would grant special privilege.
- 4.) **MINIMUM VARIANCE:** No.
- 5.) **ABSENCE OF DETRIMENT:** Some neighbors are concerned.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Yes—no one. No—Baum, Carson, Golzy, Gutekanst, Tousley. Motion denied 5-0; variance denied.

OTHER BUSINESS:

--Disposition of minutes from July 10, 2018 meeting. On a motion by Mr. Baum, seconded by Mr. Gutekanst, the Board moved to accept the minutes as presented 5-0.

The meeting was adjourned at 8:25pm.

John Golzy, Chairperson

Paul Eschenbacher, secretary