

**Office of Code Enforcement and  
Community Development**

28 Curran Drive  
Athens, OH 45701  
(740)592-3306  
(740)594-6304 Fax  
<http://www.ci.athens.oh.us>



**City of  
Athens**  
ATHENS, OHIO

**Board of Zoning Appeals  
Minutes  
May 10, 2022**

Members present: Lisa Carson (Chairperson), Kelly Sauber, Kay Tousley, Joe Krause, Aaron Thomas

City Officials present: David Riggs (Zoning Administrator).

The meeting was called to order on May 10, 2022 at 7:00 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.

**Hearing(s):**

**1.) Case #22-06V      271 East State Street      Zone R1      Emily Hunkler / appellant**

**Appellant is requesting a variance from ACC 23.03.10 to use a second principal dwelling for rental/short term rental purposes where only one principal dwelling is permitted.**

The Chairperson called on the Zoning Administrator to testify.

Mr. Riggs explained that the appellant submitted a short-term rental permit to the Code Office, which was denied due to having two primary structures. Noted that short-term rental code is still new and being worked out. Mr. Riggs asked whether both primary structures are both still resident-owners, because if one was a non-resident-owner the appellant would need to apply for conditional use as well. Also stated that the code doesn't define a non-resident-owner, and asked whether the owners living in one primary structure and renting the other would still count as owner-occupied.

Kay Tousley stated that the Board would interpret that. Mr. Riggs agreed.

The Chairperson asked when the short-term rental portion of the code was passed. Mr. Riggs explained that it passed on January 1<sup>st</sup> of 2022, but the Code Office hasn't seen many requests for permits. Noted that letters were sent out to short-term rentals in the City, so there will be more requests in the near future.

**Office of Code Enforcement and  
Community Development**

28 Curran Drive  
Athens, OH 45701  
(740)592-3306  
(740)594-6304 Fax  
<http://www.ci.athens.oh.us>



**City of  
Athens  
ATHENS, OHIO**

Kelly Sauber asked for a definition of a short-term rental. Mr. Riggs described it as a rental period of 30 days or less.

The Chairperson asked for clarification regarding the second principal dwelling. Mr. Riggs explained that it was a change of use. Joe Krause asked what the second building has been used for. Kelly Sauber explained that it had been used as a rental in the past, but it hasn't been used for rental purposes for an extended period of time. Mr. Riggs stated that it was grandfathered in, but that distinction is lost after one year without use.

Aaron Thomas asked about distinguishing between an Airbnb and a short-term rental. Mr. Riggs explained that the terms are synonymous.

The Chairperson asked what would happen if the appellant wanted a long-term rental instead. Mr. Riggs stated that the appellant would still need the variance, but not the conditional use.

Kelly Sauber asserted that short-term rentals are currently illegal in the City. Mr. Riggs explained that because of the ordinance passed at the beginning of the year, they are legal in all zones other than Open Space. Mr. Riggs read directly from the Code and explained that this case will need a conditional approval from the Board.

The Chairperson asked about a case involving an Airbnb on Shafer Street. Brief discussion over previous cases involving Airbnbs.

The Chairperson asked whether the case needed to be divided in two (conditional use and variance). Mr. Riggs explained that it depends whether the Board considers both structures owner-occupied, and stated that the exact definition isn't clear in the Code.

Aaron Thomas asked whether the address of the second structure was 271 ½ East State. Noted that one of the documents provided by the appellant listed an address of 271 ½ East State. Joe Krause stated that the appeal to the Board read 271 ½ East State Street.

The Chairperson called the appellant to speak.

Emily Hunkler, 271 East State Street – Handed the Board several documents that were not included in the paperwork already provided. Explained that the second structure in question had been used as living quarters prior to current Code and that previous owners had not acquired a

**Office of Code Enforcement and  
Community Development**

28 Curran Drive  
Athens, OH 45701  
(740)592-3306  
(740)594-6304 Fax

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



**City of  
Athens  
ATHENS, OHIO**

rental permit once the Code was changed. Appellant stated that when the house was purchased last year, there was a tenant in the second structure, despite the rental permit for the property only

applying to 271 East State (the first primary structure). Noted that the structure was constructed and used for living quarters before existing City Code was passed. Appellant provided examples of several neighboring properties that have two primary structures with at least one used for rental purposes. Noted that attempts to reach these property owners for comment before the meeting was unsuccessful. Mentioned a recent (2020) case involving 3 Sunnyside Drive wherein a single lot was granted a variance allowing two primary structures. Appellant explained that the variance request is simply trying to correct what previous owners failed to do. Appellant stated that no neighboring properties would be affected and mentioned letters of support. Explained that the request involved a structure with an intended use that predates the existing code.

The Chairperson asked if there were any questions for the appellant.

Kay Tousley asked whether the appellant would prefer a short-term rental permit over a long-term rental permit. Appellant explained that they are living in the main house on the lot, so they would prefer the second primary structure to not be occupied at all times.

The Chairperson noted that typically it would be asked whether anyone wished to come forward and speak in favor of the request, make a general comment, or speak against the request but there was no one in attendance other than the appellant. The Chairperson proceeded to read into the record several emails of support for the variance. These were sent by: Pandey and David Reiser of 273 East State Street, Ayse Sapmaz and Bilal Urkmez of 269 East State Street, and Sue Boyd of 63 Elmwood Place.

Aaron Thomas asked whether the motion should be for 271 or 271 ½ East State Street. Noted that there was a utility bill for 271 ½ East State. Mr. Riggs stated that the motion should be for 271 East State Street.

Chairperson Carson - closed discussion and called for a motion.

**On a motion by Aaron Thomas, seconded by Joe Krause, the Board moved to grant the variance on 271 East State Street to allow use of a second principal dwelling for rental/short term rental purposes where only one principal dwelling is permitted.**

Discussion over wording of variance requested. Decision made to keep it how it is written.

**FINDINGS:**

**Office of Code Enforcement and  
Community Development**

28 Curran Drive  
Athens, OH 45701  
(740)592-3306  
(740)594-6304 Fax

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



**City of  
Athens**  
**ATHENS, OHIO**

- 1.) EXCEPTIONAL CIRCUMSTANCES: Building constructed before current Code was passed.**
- 2.) HARDSHIP AND DIFFICULTY: Not the appellant's fault that previous owners did not obtain a rental permit.**
- 3.) PRESERVATION OF EQUAL PROPERTY RIGHTS: Other properties have similar structures.**
- 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: 5 votes for (Sauber, Carson, Tousley, Krause, Thomas) - 0 votes against. Motion approved.

Mr. Riggs explained that now that the variance has been granted, the Board must consider a conditional use for the short term rental due to specific language in the Code.

Kelly Sauber asked for an explanation of which zones permitted short term rentals and would not require a resident to seek a variance. Mr. Riggs stated that it depends on whether the structures are owner-occupied or not.

Lisa Carson stated that she believed both structures on 271 E State were owner-occupied. Mr. Riggs explained that if the Board were to decide that, the appellant would not need a conditional use along with the variance.

Joe Krause posed a hypothetical wherein the variance and conditional use were approved and the current owner decided to sell the property. Would the new owner need to come back to the board? Mr. Riggs explained that the variance runs with the property, and as long as the conditional use lasted for one year or longer, the conditional use would remain as well. Kelly Sauber asked how that would change if the structures were not owner occupied. Mr. Riggs explained that, assuming it is a short term rental, it would not be permitted if the owner was not living there.

The Chairperson asked for input from the Board over whether both structures are owner-occupied or not. Mr. Riggs stated that this vote will set a precedent and impact future operations. The Chairperson asked whether there were any consequences to approving this conditional use. Mr. Riggs explained that it is not clear in the Code whether two primary structures on the same property could be owner-occupied at the same time.

**Office of Code Enforcement and  
Community Development**

28 Curran Drive  
Athens, OH 45701  
(740)592-3306  
(740)594-6304 Fax  
<http://www.ci.athens.oh.us>



**City of  
Athens  
ATHENS, OHIO**

Aaron Thomas noted that there have been several cases regarding the use of garages as second primary structures before the Board, in the appellant's neighborhood specifically, and that these cases tended to hinge on whether the garage would be a rental or occupied by family.

The appellant (Emily Hunkler, 271 E State) clarified that the conditional use was only necessary if the structure was not owner-occupied, and that this is a special case due to where the property in question lies. Most properties in that neighborhood are prohibited from use of a non-owner-occupied short term rental.

The Chairperson asked whether the Board should decide on the owner-occupied status or the conditional use. Joe Krause stated his belief that the Board should decide on the conditional use because the case is the first of its kind following new legislation.

**On a motion by Kay Tousley, seconded by Kelly Sauber, the Board moved to approve a conditional use to 271 East State Street to allow a short term rental.**

The Chairperson called for a vote: 5 votes for (Sauber, Carson, Tousley, Krause, Thomas) - 0 votes against. Motion approved.

**OTHER BUSINESS:**

Approval of minutes from:

**April 12<sup>th</sup>, 2022:** approved as amended (typographical errors)

Approved by Lisa Carson, Kelly Sauber, Kay Tousley, Joe Krause, & Aaron Thomas

Joe Krause asked Mr. Riggs whether Kelly Sauber voting on the last meeting's minutes would constitute a conflict of interest because Mr. Sauber served as the appellant for Case #05-V. Mr. Riggs stated that it was merely an approval of the minutes' accuracy, and therefore would not.

Chairperson Carson adjourned the meeting at 7:40pm

---

Lisa Carson, Chairperson

Date

**Office of Code Enforcement and  
Community Development**

28 Curran Drive  
Athens, OH 45701  
(740)592-3306  
(740)594-6304 Fax  
<http://www.ci.athens.oh.us>



**City of  
Athens**  
ATHENS, OHIO

---

David Riggs, Zoning Administrator

Date