



City of Ann Arbor

301 E. Huron St.
Ann Arbor, MI 48104
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Meeting Minutes Zoning Board of Appeals

Wednesday, January 23, 2013

6:00 PM

City Hall, 301 E. Huron Street, 2nd Flr.

A CALL TO ORDER

Chair Milshteyn called the meeting to order at 6:07 p.m.

B ROLL CALL

Chair Milshteyn called the roll.

W. Carman arrived at 6:10 pm.

C. Briere arrived at 6:15 pm.

Present: 5 - Alex Milshteyn, Perry Zielak, Ben Carlisle, Sally Petersen, and Nickolas Buonodono

Absent: 3 - Candice Briere, Wendy Carman, and Maureen Sertich

C APPROVAL OF AGENDA

Milshteyn requested that the Board add 'Appointment of a Vice Chair' to the agenda.

A motion was made by Zielak, seconded by Councilmember Petersen, that the Agenda be Approved with changes. On a voice vote, the Chair declared the motion carried.

D APPROVAL OF MINUTES

D-1 12-1623 October 24, 2012 ZBA Meeting Minutes

A motion was made by Zielak, seconded by Councilmember Petersen, that the Minutes be Approved by the Board and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.

Arrival of Wendy Carman at 6:10 p.m.

Present: 6 - Wendy Carman, Alex Milshteyn, Perry Zielak, Ben Carlisle, Sally Petersen, and Nickolas Buonodono

Absent: 2 - Candice Briere, and Maureen Sertich

D-2 13-0076 December 19, 2012 ZBA Meeting Minutes

A motion was made by Zielak, seconded by Councilmember Petersen, that the Minutes be Approved by the Board and forwarded to the City Council. On a

voice vote, the Chair declared the motion carried.

Arrival of Candice Briere at 6:15 p.m.

Present: 7 - Candice Briere, Wendy Carman, Alex Milshteyn, Perry Zielak, Ben Carlisle, Sally Petersen, and Nickolas Buonodono

Absent: 1 - Maureen Sertich

E APPEALS AND HEARINGS

E-1 [13-0077](#) ZBA13-001; 1771 Plymouth Road
Upland Green LLC, is requesting one variance from Chapter 47 (Streets), Section 4:20, to permit a total of three curb cuts on this parcel; two curb cuts are the maximum permitted. The third curb cut would be located on Upland Drive and serve a new multiple-family residential building.

Chris Cheng presented the staff report.

SUMMARY:

Upland Green LLC, is requesting one variance from Chapter 47 (Streets), Section 4:20, to permit a total of three curb cuts on this parcel; two curb cuts are the maximum permitted. The third curb cut would be located on Upland Drive and serve a new multiple-family residential building.

DESCRIPTION AND DISCUSSION:

The 2.64 acre site is located adjacent to the corner of Plymouth Road and Upland Drive. There is currently one existing building constructed along Plymouth Road. The existing building contains 11,020 square foot retail on the first floor and 20 apartment units on the second and third floors. The existing building was approved in 2004 and constructed in 2005. There are currently two curb cuts on the site, one from Plymouth Road and one from Upland Green, both curb cuts lead to the parking lot for the existing building. Approval of the original site plan also included an additional 26,216 square foot retail/office building in the rear of the site. This building contained one level of underground parking with a separate entrance from Upland Drive for a total of three curb cuts to the site. The rear building was never constructed.

The petitioner is now proposing to construct the rear building in the same location containing 34 apartments and 42 underground parking spaces. Due to the time elapsed and the proposed changes to the building, an administrative amendment to the previously approved site plan is required to construct the new building. The Administrative Amendment is currently under review by City Staff.

Access to the underground parking is proposed through a separate curb cut from Upland Drive in the same location as approved in 2004. Although approved previously with three curb cuts, City Code only permits a maximum of 2 curb cuts based on the linear frontage of the site. As part of the Administrative Amendment the entire site plan is reviewed by City Staff and it was determined that a variance would be required for the third curb cut. The new curb cut would lead directly to the underground parking and will be the only means of ingress or egress for vehicles.

Standards for Approval - Chapter 47 (Streets) Variance

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power, from the City of Ann Arbor Zoning Ordinance and Chapter 47(Streets), Section 4:20(9). The following criteria shall apply:

The Zoning Board of Appeals shall have the authority to interpret this Chapter and may, in specific cases involving practical difficulty or unnecessary hardship, grant variances or exceptions from the requirements of this Chapter providing such a variance or exception is in harmony with the general purpose and intent of this Chapter.

The variance requested will be in harmony with the purpose and intent of Chapter 47. As indicated above, given the scale of the project and mixture of uses on the site, the requested variance is reasonable. The additional driveway and curb cut will allow for safer traffic to and from the site for delivery vehicles as well as resident and customer traffic. If the variance is granted, access for the new parking will be directly from Upland Drive, minimizing potential pedestrian and vehicular conflicts within the existing parking lot. In addition, existing site conditions and topography between the site and Upland Drive make an entrance to the underground parking very challenging. The new curb cut will only service the underground parking garage used by the residents of the building above. Upland Drive is a dead end road and impact to existing traffic will be minimal. The City's Traffic Engineer is supportive of the request.

PRESENTATION BY PETITIONER:

Earl Ophoff, Midwestern Consulting, LLC, 3815 Plaza Drive, Ann Arbor, MI 48108, was present on behalf of the petitioner, and explained the application.

PUBLIC HEARING:

No public speakers.

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that no correspondence had been received in support or opposition of the application.

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

A motion was made by Zielak, seconded by Petersen, that in the Case of ZBA13-001, 1771 Plymouth Road, that under Chapter 47 Variance, the Zoning Board of Appeals shall have the authority to interpret this Chapter and may, in specific cases involving practical difficulty or unnecessary hardship, grant variances or exceptions from the requirements of this Chapter providing such a variance or exception is in harmony with the general purpose and intent of this Chapter.

Based on the following findings of fact and in accordance with the established standards for approval, Chapter 47, Section 4:20:

The Zoning Board of Appeals hereby grants a variance of one street opening in order to permit three street openings, where two is the maximum permitted.

- a) There is a topography issue of 6 to 8 feet of the property being below grade.
- b) That the curb-cut would be on Upland Drive.
- c) That the variance will minimize pedestrian and vehicular conflicts on Upland Drive, per submitted plans.

On a roll call, the vote was as follows with the Chair declaring the motion carried.

Variance Granted.

Yeas: 7 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, Councilmember Petersen, and Buonodono

Nays: 0

Absent: 1 - Sertich

E-2 [13-0079](#)

ZBA13-002; 2095 West Stadium Boulevard
Heileman signs is requesting one variance from Chapter 61(Signs)
Section 5:502(2)(b), of 7 feet for construction of a ground sign 8 feet
from the front property line; 15 feet is required.

Chris Cheng presented the staff report.

SUMMARY:

Suburban Fiat is requesting one variance from Chapter 61, Signs and Outdoor Advertising, Section 5:502 (2) (b) of 7 feet from the required setback of 15 feet to permit construction of a 7 foot tall monument sign setback 8 feet from the lot line.

DESCRIPTION AND DISCUSSION:

The petitioner is requesting a variance from Chapter 61, Section 5:502 (2)(b) for the placement of a two-sided monument sign fronting 2095 West Stadium Boulevard. The variance includes a reduction from the required setback from the right-of-way from 15 feet to 8 feet.

A site plan for the construction of a 3,408 square foot building was approved in 2012. The subject parcel is zoned C3 (Fringe Commercial District) and requires a front setback range between 10-25 feet. The newly constructed building is setback 25 feet and has parking and vehicle storage in front of the building. The proposed two-faced monument sign is located in the northeast corner of the site in a landscape area, outside of the vehicular use area.

Chapter 61 addresses sign height and setback requirements in the following sections:

5:502 Exterior Business Signs.

(2) (b) Ground Signs.

Signs not structurally attached to the building shall be at least 15 feet from any street or from any lot line of the premises. Such signs shall have a maximum height starting at 3 feet in height at the right-of-way line, and increasing 1 additional foot for each 2 feet the sign is set back from the right-of-way line, provided that, if it is located within 20 feet of the building, it may have the same maximum height as could a sign located on the building, provided that the height of any such sign shall not exceed 25 feet.

Standards for Approval - Variance

The Sign Board of Appeals has the power granted by State law and by Section 5:517(4), Application of the Variance Power from the City of Ann Arbor Sign

Ordinance. The following criteria shall apply:

(a) That the alleged hardships or practical difficulties, or both, are peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the city.

The petitioner states that the setback is impractical at the required 15 foot setback as it places the monument sign in the parking lot and the exiting landscaping and light poles block the view of the sign from the street. From a safety perspective, this is the only sign perpendicular to the street and would alert customers to the business entrance.

Staff agrees there is a light pole and landscaping screening the parking lot and the proposed monument sign would be in the parking lot if setback the required 15 feet. The reduction in the required setback from 15-feet to 8-feet does not impede the flow of on-coming traffic nor create a dangerous viewing situation while either entering or exiting this site per the City Traffic Engineer. There is no effect on neighboring properties as the ground sign does not block other structures in the area.

Staff is currently working on revising the sign code section addressing setbacks. This particular section of code is proposed to be changed to allow a minimum 5 foot setback.

(b) That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by the failure of the Board to grant a variance and the rights of others whose property would be affected by the allowance of the variance.

Staff contends that approval of the setback variance would not negatively impact other property owners, and the proposal does not cause negative traffic impacts. The petitioner proposes to setback the monument sign as far as practicable to be seen from traffic while not being located in the parking lot.

Recently a Sign Permit was issued for 3 wall signs for this business totaling 52 square feet. The proposed monument sign meets the sign area and message unit requirements of Chapter 61.

Staff recognizes the challenge presented to the petitioner to promote his business; the proposed reduction in the setback on the property should be sufficient to facilitate business identification and promotion.

PRESENTATION BY PETITIONER:

Tim Heileman, 4797 Gratiot, St Clair, MI, was present on behalf of the petitioner, and explained the application.

Tim LeRoy, 1795 Maplelawn, Troy, MI, owner, was present to respond to the Board's enquiries.

PUBLIC HEARING:

No public speakers.

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that no correspondence had been received in support or opposition of the application.

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

A motion was made by Zielak, seconded by Briere, that in the Case of ZBA13-002, 2095 West Stadium Boulevard, that the Zoning Board of Appeals grants a variance of 7 feet from the regular setback of 15 feet to permit construction of a 7 foot tall ground monument sign, setback 8 feet from the lot line,

Based under Chapter 61 Variance, that a variance may be allowed by the Zoning Board of Appeals in cases involving practical difficulties or unnecessary hardships only when the evidence in the official record of the appeal supports all the following affirmative findings;

a) That the alleged hardships or practical difficulties, or both, are peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the City.

1. That there appears to be a lamp pole and landscape screening which would block the sign from the street.

2. That the 15 feet variance would place the sign in the parking lot.

b) That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance and the right of others whose property would be affected by the allowance of the variance.

1. The City Traffic Engineer has said there will be no negative traffic impacts.

2. There will not be any negative impacts to the other property owners.

3. The 7 foot variance places the sign as far back as practical, to be seen from the street, while not placing it in the parking lot, per submitted plans.

On a roll call, the vote was as follows with the Chair declaring the motion carried.

Variance Granted.

Yeas: 5 - Briere, Chair Milshteyn, Zielak, Councilmember Petersen, and Buonodono

Nays: 2 - Carman, and Carlisle

Absent: 1 - Sertich

E-3 [13-0080](#)

ZBA13-003; 515 North Fifth Avenue

Bowers and Associates is requesting two variances from Chapter 62 (Landscape and Screening):

1. A variance to reduce the required 15 foot wide conflicting land use buffer in order to provide a 12 foot wide buffer along the north property line, All required landscaping will be installed.
2. A variance to reduce the required 15 foot wide conflicting land use buffer in order to provide a 1 to 12 foot wide variable buffer and plant 4 trees (9 trees are required) along the south property line.

Chris Cheng presented the staff report.

SUMMARY:

Bowers and Associates, is requesting two variances from Chapter 62 (Landscape and Screening) Section 5:603 (C):

1. *A variance to reduce the required 15 foot wide conflicting land use buffer in order to provide a 12 foot wide buffer along the north property line, All required landscaping will be installed.*
2. *A variance to reduce the required 15 foot wide conflicting land use buffer in order to provide a 1 to 12 foot wide variable buffer and plant 4 trees (9 trees are required) along the south property line.*

DESCRIPTION AND DISCUSSION:

Parcels zoned R4 and adjacent to parcels principally zoned or used for residential uses require conflicting land use buffers. This site requires conflicting land use buffers, which are 15 feet wide and contain landscaping trees every 15 feet, along the north, south and west property lines.

The subject parcel is located on North Fifth, just south of Beakes Street. The site is zoned Multiple-family Dwelling (R4C). The petitioner seeks to construct a three-story building housing 4 dwelling units on this 8,849 square foot parcel (R4C minimum lot size is 8,500 square feet). Four parking spaces will be located in a garage on the first floor of the structure.

The project requires action by the City Planning Commission, as well as final approval by City Council. The site plan for the project was recommended for approval by the Planning Commission on January 3, 2013, contingent upon the approval of the variance noted above. If the variance is granted, the plan will proceed to City Council for final approval. For more background information on the project, the Planning Commission staff report is attached

The petitioner mailed information postcards after submission of the proposed site plan to the Planning Commission. The petitioner has also met with the neighbors several times.

Chapter 62 (Landscape and Screening) Variance - Standards for Approval

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power, from the City of Ann Arbor Zoning Ordinance and Chapter 62, Section 5:609. The following criteria shall apply:

Upon an appeal filed to the zoning board of appeals in accordance with the procedures of Chapter 55, a variance may be granted from the strict application of the provisions of this chapter in cases involving practical difficulties or hardships when the evidence supports that the public benefit intended to be secured by this chapter will exist with less than the required landscaping or screening.

As previously mentioned, the petitioner is proposing to construct a 4 unit residential building with parking provided under the building. Although the adjacent properties are all zoned R4C, the proposed multiple-family use, requires a 15 foot wide conflicting land use buffer along the two sides and the rear of the parcel. The conflicting land use buffer width is met on the west (rear) of the site. However, a variance is requested from landscaping requirements for the north and south sides.

The variance for the north buffer is requested in order to reduce the required 15 foot width down to a minimum of 12 feet for 56 feet along the north property line. The length of the required buffer is 133 feet which is the depth of the parcel from North Fifth Avenue. The remaining buffer area will meet all requirements. All required landscaping will be installed in the buffer area. As permitted by code, a sidewalk leading from Fifth Avenue to the front door of one unit will be located within the buffer area.

The variance for the south buffer is requested in order to reduce the required 15 foot width down to a minimum of 1 foot for 57 feet from the front property line and 12 feet 6 inches for 42 feet along the south property line. The length of the required buffer is 133 feet which is the depth of the parcel from North Fifth Avenue. A total of nine trees are required to be planted within the buffer. The petitioner is proposing to plant 4 trees, 5 less than required. The remaining buffer area will meet all requirements. A driveway leading to the enclosed 4 car garage will be located 2 feet from the south property line for the first 57 feet from the front. Although not required, a five foot high fence will be installed along the length of the southern property line to help mitigate for the reduced buffer. All required parking for the proposed development will be enclosed and not visible to the south.

A recent code change in 2011 added the requirements for landscaped buffers between R4C zoned properties. The two required conflicting land use buffers along the side property lines utilize almost half of the width of this site (the lot is 66 feet wide and total buffer width is 30 feet). The total area required for buffers makes multiple-family residential development challenging on most R4C lots.

The variance request has been reviewed and is supported by staff responsible for landscape plan review.

PRESENTATION BY PETITIONER:

Scott Bowers, Bowers and Associates Architects, 2400 S. Huron Parkway, Ann

Arbor, was present on behalf of the petitioner, and explained the application.

PUBLIC HEARING:

No public speakers.

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that the Board had received the following letters in support of the request:

Grace Singleton, Zingerman's Delicatessen, Ann Arbor.

Barbara and Edward Lynn, 511 North Fifth Avenue, Ann Arbor.

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

A motion was made by Zielak, seconded by Petersen, that in the Case of ZBA13-003, 515 North Fifth Avenue, that the Zoning Board of Appeals grants

- 1. A variance to reduce the required 15 foot wide conflicting land use buffer in order to provide a 12 foot wide buffer along the north property line, All required landscaping will be installed.**
- 2. A variance to reduce the required 15 foot wide conflicting land use buffer in order to provide a 1 to 12 foot wide variable buffer and plant 4 trees (9 trees are required) along the south property line.**

Based on Chapter 62 (Landscape and Screening) Variance:

Upon an appeal to the Zoning Board of Appeals in accordance with the procedures of Chapter 55, a variance may be granted from the strict application of the provisions of this chapter in cases involving practical difficulties or hardships when the evidence supports that the public benefit intended to be secured by this chapter will exist with less than the required landscaping or screening.

a) That the public benefit intended to be secured by this chapter will exist with less than the required landscaping buffer width, through the extension of the fence along one of the conflicting sides of the land use buffer, per submitted plans.

On a roll call, the vote was as follows with the Chair declaring the motion carried.

Variances Granted.

Yeas: 7 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, Councilmember Petersen, and Buonodono

Nays: 0

Absent: 1 - Sertich

F **OLD BUSINESS**

G **NEW BUSINESS**

Nomination of a Vice Chair to the Zoning Board of Appeals.

Petersen nominated Zielak to the position of Vice Chair.

On a voice vote, the vote was unanimously approved.

H **REPORTS AND COMMUNICATIONS**

Chair Milshteyn brought the Board's attention to the memo in their packets regarding Revised Format for Meeting Minutes, noting that the complete video of the meetings will be considered the full record of the meeting and they are archived for future reference.

Carman noted that she was present at the December meeting and requested that the record reflect that she arrived late.

I **PUBLIC COMMENTARY - (Items not on the Agenda - 3 Minutes per Speaker)**

J **ADJOURNMENT**

Motion made by Zielak, seconded by Buonodono to adjourn the meeting at 6:53 p.m.

Community Television Network Channel 16 live televised public meetings are also available to watch live online from CTN's website, www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).

Live Web streaming is one more way, in addition to these listed below, to stay in touch with Ann Arbor City Council and board and commission actions and deliberations.

- *Video on Demand: Replay public meetings at your convenience online at www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx*
- *Cable: Watch CTN Channel 16 public meeting programming via Comcast Cable channel 16.*

The complete record of this meeting is available in video format at www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>), or is available for a nominal fee by contacting CTN at (734) 794-6150.