



**APPROVED MINUTES OF THE REGULAR MEETING OF  
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR  
DECEMBER 19, 2007**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, December 19, 2007 at 6:05 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:05 p.m. by Chairperson Carol Kuhnke.

**ROLL CALL**

Members Present: (8) W. Carman, C. Carver, C. Briere, C. Kuhnke, K. Loomis, D. Tope, D. Gregorka (arrived at 6:09 p.m.) and R. Eamus (arrived at 6:12 p.m.)

Members Absent: (1) R. Suarez

Staff Present: (2) M. Kowalski and B. Acquaviva

**A – APPROVAL OF AGENDA**

**A-1** The Agenda was approved as presented without objection.

**B - APPROVAL OF MINUTES**

**B-1** Approval of Draft Minutes of the November 28, 2007 Regular Session.

Moved by D. Tope, Seconded by C. Carver, **“that the minutes of the November 28, 2007 Regular Session be approved as presented.”**

**On a Voice Vote – MOTION PASSED – UNANIMOUS**

**C - APPEALS & ACTION**

**C-1 828 Brookwood Place - 2007-Z-028**

Marc Rueter is requesting permission to alter a non-conforming structure (**Chapter 55, Section 5:87**) for expansion of an existing single-family house.

**Description and Discussion:**

The petitioner is proposing to construct a two-story addition with basement to the house containing 485 square feet on the first floor and 360 square feet on the second for a total of 845 square feet. After construction of the addition, the house will be 2,065 square feet and will have six bedrooms. The proposed addition will contain 2 bedrooms on the first floor, 2 bedrooms on the second floor and a media room in the basement.

The rear half of the building addition will follow existing rooflines extending 12 feet 11 inches to the east from the side of the existing house to 6 feet from the side property line. The required side setback is 5 feet. The second story addition will be setback 6 feet 1 inch from the rear of the first floor addition. In the front, the addition is set back 2 feet 2 inches from the existing building’s front façade and will be 18 feet 6 inches from the front property line. The averaged front setback for the area is 8 feet 4 inches.

54 The front half of the addition will extend 13 feet 11 inches from the side of the existing house  
 55 to five feet six inches from the eastern side property line. The addition is planned to align with  
 56 the existing house floor plan.

57  
 58 The house is non-conforming for the rear setback; the existing house is located 11 feet from  
 59 the rear setback. The required rear setback is 40 feet. The proposed addition will not be built  
 60 any closer to the rear property line than the structure currently stands. No other part of the  
 61 structure is constructed within the setbacks.

62  
 63 **Questions to Staff by the Board**

64  
 65 W. Carman – (To M. Kowalski) - This property is zoned R4C. Will you explain why it is being  
 66 reviewed using R1C standards? (Because it is a single-family home, under the R4C  
 67 standards, it allows single-family uses subject to all the rules and regulations of the R1C  
 68 zoning district. So you can apply the R1C standards to a single-family home in the R4C  
 69 district).

70  
 71 Obviously, this is non-conforming, but why doesn't your report reflect variances? (This was  
 72 the subject we have discussed previously. Because they are not encroaching any further into  
 73 a setback than what the current structure does – the only setback not within proper limits is  
 74 the rear, and they're not going closer into that rear setback).

75  
 76 They aren't going 'closer' but they are adding square footage – they're increasing their  
 77 footprint in the rear setback. It's not being built on top of something already existing, so I'm  
 78 not sure that that interpretation is correct.

79  
 80 D. Gregorka – Stated that the house is going farther into the rear setback, this is why a  
 81 variance is needed. (M. Kowalski – The ZBA has the power to interpret the code and grant a  
 82 variance, so you can if you feel you need one).

83  
 84 *(The Board discussed the need for variances versus permission to alter a non-conforming*  
 85 *structure at length. It was mentioned by staff that we have requested a formal interpretation*  
 86 *regarding these matters from the city attorney's office. The Chair stated that the Board is*  
 87 *authorized to review decisions by the Building Department and to take appeals from the*  
 88 *decisions of the Building Department and the Building Department has made a decision in*  
 89 *this case, and no one is appealing that. There isn't an 'aggrieved' property owner who has*  
 90 *come before us and said this was misinterpreted and allow someone to build in a way they*  
 91 *shouldn't. This is a healthy debate, but it should be done at a working session).*

92  
 93 D. Tope – How was the home made non-conforming? Was the current footprint of the house  
 94 in existence before the zoning ordinance went into R4C? (M. Kowalski – The house was built  
 95 in 1920, but there was an addition put onto the rear at some point, but well before the current  
 96 zoning).

97  
 98 To me, this is the issue. If the building was there, then made non-conforming because it did  
 99 not conform to the rear setback, then the whole rear setback that it establishes is along the  
 100 line that was established. They didn't need a variance request to comply with the rear  
 101 setback because of the rear footprint. This established the rear setback that we are to apply  
 102 to a non-conforming structure. I agree with staff's interpretation, as the rear setback was  
 103 already non-conforming all along the rear, and they're not varying from that. I understand the  
 104 debate, but this is how I resolve it in my mind.

105

106 R. Eamus – Stated for clarification that the home is into the rear setback because we  
 107 established the standards after the home was already built. We had a long discussion last  
 108 night regarding the Lower Burns Park area in which 88 percent of the homes are  
 109 non-conforming, so this is not an unusual situation in the city.

110

111 **Petitioner Presentation**

112

113 Mr. Marc Rueter, Rueter Architects and Andrew Goldstein, owner, were present to speak on  
 114 behalf of the appeal. They explained the appeal at length.

115

116 **Questions of the Petitioner by the Board**

117

118 D. Gregorka – (To Owner) – Stated that his problem with the appeal was the encroachment  
 119 into the rear setback. Why couldn't this be a bit smaller so that we don't have the variance  
 120 issue before us? (Mr. Reuter stated that the existing basement has troubles – the new  
 121 basement will have code compliant steps for egress - this is the main reason the addition is  
 122 there). Is this primarily rental housing? (Yes). So you're trying to increase the bedrooms to  
 123 increase student rental.

124

125 C. Carver – Even though this doesn't go back into the rear setback, is the city in favor of this?  
 126 (M. Kowalski – I think it is a minimal request when looking at the surrounding properties).

127

128 D. Gregorka – What are the surrounding properties like for rear setback? (M. Kowalski – It's  
 129 pretty consistent with the rest of the parcels).

130

131 The petitioner stated that he spoke to the homeowners on the street, and there was no  
 132 opposition to their plan.

133

134 **Public Commentary** – None.

135

136

137 **Discussion by the Board**

138

139 W. Carman – I have a problem with the way we're approaching this. We're taking R4C  
 140 property, and we're applying R1C Standards because it's a single-family house, we're trying  
 141 to build six bedrooms, but the code doesn't allow single-family homes to have six unrelated  
 142 people living in them, you have to have only four, in which case you don't need six bedrooms.  
 143 I think we should either apply R4C standards or giving variances to them or there is no point  
 144 in the six bedrooms.

145

146 I understand that a family could move in and they could use these rooms, but we know what  
 147 they're used for, and if he doesn't then the next owner will, and it doesn't seem appropriate to  
 148 me with R1 standards. (M. Kowalski – The occupancy is listed in a different area of the  
 149 zoning code, and it does specifically state that six persons can live as a single housekeeping  
 150 unit in R4 districts). I know that, but you're no longer planning to apply R4 anything to this – it  
 151 doesn't even meet R1C, and it's a strange way to get around the rules.

152

153 R. Eamus – The requirement is that it satisfy the area, height and placement regulations that  
 154 are closest to it or those of a single family - which would be the R1C. And that's what area,  
 155 height, and placement - not for the "use". The "use" remains an R4 "use". Which is six  
 156 unrelated individuals.

157

158 D. Gregorka – Looking at the proposal, the petitioner would still be able to build a large  
159 addition without a variance. This would decrease the rear yard to about 11 ft. in the back.  
160

161 R. Eamus – They’re grandfathered in, but they need permission to alter a non-conforming  
162 structure. I agree with Donna’s interpretation.  
163

164 C. Carver - I’m confused. If you’re saying that this is the proper setback because they  
165 changed the zoning laws after they built the house then how can the house be non-  
166 conforming?  
167

168 D. Tope- My interpretation in hearing your question is that the existing house establishes the  
169 rear setback where it is all the way across the lot. And that rear setback is non-conforming to  
170 R1C standards which need to be applied in this case. So to encroach further into the rear  
171 setback is not what’s happening, it’s expanding a non-conforming structure whose rear  
172 setback does not conform to the R1C standards that need to be applied.  
173

174 D. Gregorka – If you agree with that, I think what we really have to consider around the table  
175 is - do we really feel that this alteration itself is nearly as practical with the requirements of the  
176 code or not. If this were a vacant lot, they wouldn’t be able to build this, due to the lot size.  
177

178 C. Kuhnke – I’m troubled that the petitioner has requested a variance and staff doesn’t  
179 believe it’s necessary. We still don’t have our interpretation from the city attorney’s office. I  
180 would be sympathetic to tabling it. (D. Gregorka, D. Tope – agree).  
181

182 M. Kowalski – Stated he would indicate this to the attorney’s office.  
183

184 C. Briere – Mentioned that there are also two other issues on the current agenda, and this  
185 could also affect them – even though they did not ‘request’ a variance, but alteration to a  
186 Non-conforming structure.  
187

188 *(Further discussion by the Board on whether to vote or table the issue and offered solutions*  
189 *and suggestions on how a major addition could still be added without taking away larger*  
190 *portions of the rear setback).*  
191

## 192 **MOTION**

193  
194 Moved by D. Gregorka, Seconded by W. Carman, **“In the matter of ZBA Appeal Number**  
195 **2007-Z-028, 828 Brookwood, that based on the following findings of fact and in**  
196 **accordance with the established standards for approval, the Zoning Board of Appeals**  
197 **hereby grants permission to alter a non-conforming structure;**  
198

199 a) **The proposed structure increased the already significant encroachment into**  
200 **the rear setback;**  
201

202 b) **The petitioner can reasonably add to that structure without needing that**  
203 **encroachment and;**  
204

205 c) **The motion is also subject by the plans submitted by the petitioner.**  
206

207 **On a Roll Call Vote – MOTION TO APPROVE – *FAILED* – FOUR YEA – FOUR NAY**  
208 **W. Carman, C. Carver, D. Gregorka and D. Tope – NAY – (4)**  
209 **K. Kuhnke, K. Loomis, R. Eamus and C. Briere – YEA (4)**  
210

**C-2 441 Hamilton Place - 2007-Z-029**

Tom Wagner is requesting permission to alter a non-conforming structure (**Chapter 55, Section 5:87**), for expansion of an existing single-family house.

**Description and Discussion:**

The petitioner is proposing to add an 11 by 20 foot (220 square feet) second story addition over the existing one story addition on the rear of the house. The addition will contain 2 bedrooms and allow the addition of a bathroom to the existing house. The parcel is non-conforming for lot area and the house is non-conforming for front, sides and rear setbacks. The addition will follow the existing building lines of the house and will not extend any closer to the property lines. The addition will add approximately 220 square feet of living space to the house.

**Questions to Staff by the Board**

C. Carver – Questioned whether the petitioner needed permission to alter a non-conforming structure since it would not be increasing the footprint of the home. (M. Kowalski – Because the home is non-conforming, it still needs permission to alter a non-conforming structure).

W. Carman – Stated it is because the addition itself does not comply with the Zoning Standards.

*(Discussion amongst the Board regarding why the lot is so small. It appears there was a lot split at some point).*

**Petitioner Presentation**

Mr. Tom Wagner was present to speak on behalf of the appeal. The petitioner stated that staff outlined the basics. They're proposing to build up a floor. There is a shed roof on the back that pools full of water and a door that walks onto it with no railings. This is a student neighborhood, and we're hoping to rent at some point. It seemed like a good use to us to increase over that area in the rear and allow us to increase the home with adding another bathroom, bedroom, etc.

**Public Commentary** – Chair C. Kuhnke mentioned that there was a communication from Peter Deininger of 318 East Jefferson #6 in support of this petition.

**Questions to Staff by the Board** – None.

**Questions of the Petitioner by the Board**

W. Carman – How many bedrooms will there be if this construction is completed. (Petitioner – Six bedrooms total upon completion – it currently has four with a tiny room or 'coal room.'

C. Kuhnke – The plans you've submitted state 'preliminary,' but do you understand that what we approve today is what you are allowed to build? (Petitioner – Yes).

264 **Discussion by the Board**

265  
266 **MOTION**

267  
268 Moved by D. Gregorka, Seconded by C. Carver, “In the matter of ZBA Appeal Number  
269 **2007-Z-029, 441 Hamilton Place, that based on the following findings of fact and in**  
270 **accordance with the established standards for approval, the Zoning Board of Appeals**  
271 **hereby grants permission to alter a non-conforming structure;**

272  
273 a) **The alteration complies as nearly as practicable with the requirements of the**  
274 **Zoning Chapter, given that it doesn’t increase the existing footprint of the**  
275 **house and the addition is relatively small;**

276  
277 b) **The alteration, because of its small size will not have a detrimental affect on**  
278 **neighboring properties, per attached plans.”**

279  
280 W. Carman – NAY – (1)

281 K. Kuhnke, K. Loomis, R. Eamus, C. Briere, C. Carver, D. Gregorka and D. Tope – YEA (7)

282  
283 **On a Voice Vote – MOTION TO APPROVE -PASSED – 7 YEA and 1 NAY**

284  
285  
286 **C-3 905 Sybil Street - 2007-Z-030**

287  
288 Jim Emerick is requesting permission to alter a non-conforming structure  
289 **(Chapter 55, Section 5:87)** for expansion of an existing single-family house.

290  
291 **Description and Discussion:**

292  
293 The petitioner is proposing to add a 12 foot 6 inch by 22 foot (264 square feet) two story  
294 addition on the rear of the house. The addition will contain 3 bedrooms and a bathroom and  
295 allow for expansion of the existing kitchen and living room. After completion of the addition,  
296 the house will have six bedrooms and two bathrooms. The parcel is non-conforming for lot  
297 area and the house is non-conforming for front and side yard setbacks. The addition will  
298 follow the existing building lines of the house and will not extend any closer to the side  
299 property lines than the existing structure. The footprint of the existing house will be expanded  
300 12 feet 6 inches toward the rear of the site, but will remain out of the required rear setback.  
301 The addition will add approximately 453 square feet of living space to the house.

302  
303 **Petitioner Presentation**

304  
305 Mr. Jim Emerick was present to speak on behalf of the appeal. He stated that the plans  
306 speak for themselves and the only other option he has to improve the kitchen and add an  
307 additional bathroom, the first floor is the only other place for plumbing.

308  
309 **Questions to Staff by the Board**

310  
311 C. Carver – This will end up being a single-family, one unit home? (M. Kowalski – Yes). It  
312 shows six parking spaces – are they required to adhere to off-street parking standards?  
313 Painting, striping, buffering, lighting? (The petitioner could expound on that). They’re making  
314 alterations; shouldn’t this have to be made to code? (Yes, if they conform, yes).

315

316 In the past, when people come in for this type of request, it is part of the deal that this is  
317 enforced.

318  
319 W. Carman – This passes the interpretation for a single-family house, so they don't need six  
320 spaces. We know they 'need' them, but it's not required. If it were a multi-family structure, it  
321 would differ.

322  
323 **Questions of the Petitioner by the Board**

324  
325 D. Gregorka – One of the non-conformities is that you're only 2 ft., 10 in. from one of the side  
326 setbacks. Why couldn't you offset the addition a few more feet to meet the requirement?  
327 (Petitioner stated that he would have to re-evaluate the plans for square footage, and he  
328 would not be opposed to that. He was under the assumption that the setback was 12 ft. and  
329 not 5 ft).

330  
331 C. Kuhnke – Polled the Board to see if the issue should be tabled for side setback re-  
332 evaluation.

333  
334 D. Gregorka – Stated that he could support this if the non-conformity on the side was not  
335 continued with the addition. He asked the Board for input.

336  
337 *(The Chair advised the petitioner that if the issue were tabled, this would allow him additional*  
338 *time to check with his architect and do new measurements on the bedrooms).*

339  
340 D. Tope – Stated that if the petitioner adhered to the standards and did what D. Gregorka  
341 suggested, he would no longer need to come before the ZBA for permission to alter a non-  
342 conforming structure.

343  
344 **Public Commentary** – None.

345  
346 **Discussion by the Board**

347  
348 W. Carman – Mentioned that the petitioner could increase his square footage legally by going  
349 back farther – offsetting the other direction.

350  
351 **MOTION**

352  
353 Moved by W. Carman, Seconded by D. Tope, "to table this petition until the petitioner can  
354 reevaluate his petition within the next ninety days".

355  
356 **On a Voice Vote** – MOTION TO TABLE – **UNANIMOUS**.  
357 ***(Tabled no longer than March 26, 2008).***

358  
359 **D. UNFINISHED BUSINESS** – None.

360  
361 **E. NEW BUSINESS** - None.

362  
363 **F. REPORTS & COMMUNICATIONS** - Recorded under Appeals

364  
365 **G. AUDIENCE PARTICIPATION – GENERAL** – None.

366  
367 **ADJOURNMENT**

368

369 Moved by C. Carver, Seconded by D. Tope, "that the meeting be adjourned."

370

371 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**

372

373 Chairperson Carol Kuhnke adjourned the meeting at 8:20 p.m.

374

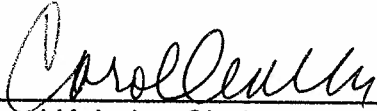
375 **(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –**  
376 **Zoning Board of Appeals)**

377

378

379

380



\_\_\_\_\_  
Carol Kuhnke, Chairperson

Date: \_\_\_\_\_

1-23-08