



City of Ann Arbor

Formal Minutes

Zoning Board of Appeals

301 E. Huron St.
Ann Arbor, MI 48104
[http://a2gov.legistar.com/
Calendar.aspx](http://a2gov.legistar.com/Calendar.aspx)

Wednesday, February 22, 2017

6:00 PM

Larcom City Hall, 301 E Huron St, Second
floor, City Council Chambers

A **CALL TO ORDER**

Chair Briere called the meeting to order at 6:10 p.m.

B **ROLL CALL**

Chair Briere called the roll.

Staff Present: City of Ann Arbor Zoning Coordinator, Jon Barrett.

Present: 8 - Candice Briere, David DeVarti, Kirk Westphal, Michael Dobmeier, Michael B. Daniel, Nicole Eisenmann, Jeremy Peters, and Todd Grant

Absent: 1 - Heather Lewis

C **APPROVAL OF AGENDA**

Moved by Peters, seconded by Westphal to approve the Agenda as presented. On a voice vote, the Chair declared the motion carried.

D **APPROVAL OF MINUTES**

D-1 **17-0278** Zoning Board of Appeals Meeting Minutes of January 25, 2017

Moved by Peters, seconded by Westphal to approve the January 25, 2017 ZBA minutes. On a voice vote, the Chair declared the motion carried.

E **APPEALS AND HEARINGS**

Public Hearings: Individuals may speak for three minutes. Please state your name and address for the record.

Comments about a proposed project are most constructive when they relate to: (1) City Code requirements, or (2) additional information about the area around the petitioner's property and the extent to which a proposed project may positively or negatively affect the area.

- E-1** **17-0279** ZBA17-001; 536 South Forest Avenue
Robert A. Hoida, AIA, and Hobbs-Black Architects are requesting an alteration to a non-conforming structure at University Towers. The petitioner proposes to construct an enclosure over the existing outdoor pool. The pool enclosure will consist of three thousand (3,000) square feet. This enclosure area will increase the Floor Area Ratio (FAR) from 9.68 to 9.81.

City of Ann Arbor Zoning Coordinator, Jon Barrett, provided the following staff report:

Robert A. Hoida, AIA, Hobbs and Black Architects, representing University Towers LLC, requests permission to alter a non-conforming structure in order to construct a three thousand (3,000) square foot enclosure over the existing outdoor pool. This will increase the overall floor area ratio (FAR) from 9.68 to 9.91.

BACKGROUND:

The property is zoned D1, Downtown district and is located at the intersection of South Forest Avenue and South University Avenue. The use of the property is multi-family (predominantly student housing) and street retail. The applicant states that the building is eighteen (18) stories and constructed approximately fifty (50) years ago. The use and function of the site and the building will remain unchanged. While the FAR is proposed to increase, no additional units or other increase in use intensity is proposed.

DESCRIPTION:

The new enclosure will allow the residents use of the pool year round, as it currently is limited to only a few months per year. The intention is to create an enclosure, which will have retractable walls and skylights to allow them to be retracted during favorable weather conditions. An Administrative Amendment to the approved site plan will be required for the additional floor area to be added to the structure. If the variance is approved, it should be conditioned upon the submittal and approval of the Administrative Amendment.

Standards for Approval - Permission to Alter a Non-Conforming Structure

The Zoning Board of Appeals has all the power granted by State law and by Section 5:98, from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

The alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on neighboring property.

Applicant states that the proposed construction will not have a negative impact on the surrounding properties or any other detrimental effects. The occupancy of the tower is not increasing. There will be no additional storm water run-off and traffic will be unaffected. The project will support the long-term viability of the building.

QUESTIONS BY BOARD TO STAFF:

DeVarti asked if the pool is currently in the ground.

Barrett responded that it is an in-ground pool, at ground level.

Grant asked why this applicant had to come before the ZBA.

Barrett said the Planning Manager and Planning staff made the determination that the proposal was an increase in usable floor area.

Westphal asked how the request was non-conforming.

Barrett said, due to the fact that the whole property is filled up with the building envelope and they are also at their max capacity for floor area ratio, and they will be increasing their FAR, what they are allowed, so when they increase their floor area, they are essentially increasing their intensity and their use of the property, thus the need for the Alteration to the Non-conforming structure.

Westphal asked what the applicant's by-right floor area ratio is.

Barrett deferred the question to the petitioner.

PRESENTATION BY PETITIONER:

Robert Hoida, AIA, Hobbs & Black, 100 N State Street, Ann Ann Arbor,

applicant was available to explain the request and answer questions from the Board.

Hoida said he was before the Board due to a definition interpretation of 'floor area', as determined by the City Attorney and staff to be an "enclosed area". He said the building was built about 50 years ago before the City's current zoning ordinance. He noted that nothing would really change from the outside, and the only ones who would be able to see the difference is the one neighboring rental property house. He said they want to be able to make use of the pool around the year, instead of just in the summertime.

Dobmeier asked if the structure will be a stand alone structure or will it be tied to the existing building. He asked if pool users would have to exit the main building and then enter the pool enclosure.

Hoida said they had originally drawn it as a separate building, but he is not sure that it necessarily needs to be. He said there are some residents at the second floor that over-look the pool so they don't want to put the enclosure tight up against the building. He said it could be a tunnel or a temporary structure they can open up in the summer.

Peters asked if the pool was constructed at the same time as the main building.

Hoida said yes.

Eisenmann asked if the reconstructed pool building and toilets would be one for one of what is there.

Hoida said it would probably be one for one, or a little bit smaller than the existing.

Dobmeier asked if the proposal would impact trash pick-up.

Hoida said no, there would be no interference with anything.

DeVarti asked if the new pool enclosure goes into any setbacks in the current zoning code.

Hoida said in the D1 zoning all the setbacks are 0; he noted that they have a four (4) foot setback on the pool side.

Grant asked if the enclosure would be behind the brick wall.

Hoida said yes, noting they might re-build the brick wall.

PUBLIC HEARING:

Noting no public speakers, the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

None

MOTION:

Moved by DeVarti, Seconded by Peters, in Petition ZBA17-001; 536 South Forest Avenue, Permission to Alter a Non-conforming Structure, based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS Permission to Alter a Non-conforming Structure, per submitted plans, and conditioned upon Approval of an Administrative Amendment.

a) The alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on the neighboring property.

BOARD DISCUSSION:

The Commission took into consideration the presented petition and discussed the matter. [For a complete record of the discussion, please see linked video format]

On a roll call, the vote was as follows, with the Chair declaring the motion approved. Vote: 8-0

Permission to Alter a Non-Conforming Structure GRANTED.

Yeas: 8 - Chair Briere, DeVarti, Councilmember Westphal, Vice Chair Dobmeier, Daniel, Eisenmann, Peters, and Grant

Nays: 0

Absent: 1 - Lewis

E-2 [17-0280](#) ZBA17-002; 3500 Washtenaw Avenue
Bright Star Signs and Pete Brown request two variances from Chapter 61 Signs and Outdoor Advertising, Section 5:502 Exterior Business Signs.

The petitioner proposes to locate their fifteen foot (15) tall sign 6.6 feet from the right of way of Washtenaw Avenue, when thirty feet (30) is required and 28.34 feet from Yost Boulevard when thirty feet (30) is required. The Washtenaw Avenue location will require a 23.4-foot variance and Yost Boulevard will need 1.66 feet. The sign will advertise for the retail shopping center.

City of Ann Arbor Zoning Coordinator, Jon Barrett, provided the following staff report:

Summary:

Bright Star Signs is requesting two (2) variances for a fifteen (15) foot tall multi-tenant ground mounted sign to be located in front of a shopping plaza. The variances are from Chapter 61 Signs & Outdoor Advertising Section 5:502 (2)(b) Ground signs.

Background:

The requested variances are twenty-three (23) feet six (6) inches from Washtenaw Avenue and one (1) foot nine (9) inches from Yost Boulevard. The shopping center is zoned C3, Fringe Commercial.

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 a building shall be at least 5 feet from all property lines. Such signs are permitted a maximum height of 1 foot for each 2 feet the sign is set back from the nearest property line, provided 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 right of way along Washtenaw Avenue includes a twenty (20) foot wide public sidewalk and a twenty-two (22) foot public right of way. A fifteen (15) foot tall sign requires a thirty (30) foot setback. Therefore, a seventy-two (72) foot setback would effectively place the proposed sign in the parking lot according to the applicant.

(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.

Applicant contends that complying with the ordinance will decrease the advertising benefit for the tenants of the property. If the variance is denied and the sign is located in the parking lot than the visibility of the sign will be compromised and will have a negative impact on the potential customers that drive by the center and the tenants.

(c) Is the condition which prevents you from complying with the ordinance self-imposed? How did the condition come about?

The applicant states that the conditions are not self-imposed and are a result of municipal planning.

QUESTIONS BY BOARD TO STAFF:

DeVarti asked if the shopping complex was one building or multiple buildings, noting the aerial shown makes it look like multiple buildings.

Barrett explained that the one shopping center building is allowed to have 1 detached identification sign. He stated that they currently don't have an identification sign and have removed three identification signs that were previously located in the parking lot, in order to have this one sign. He said each tenant will also be allowed, per code, to have their individual wall sign.

DeVarti asked if there was a size limit on the tenant signage.

Barrett said yes.

Westphal asked if the ZBA application was submitted before construction on the sign commenced.

Barrett deferred the question to the applicant.

Grant said he saw the applicant in a situation where they have to double count due to the sidewalk and the right-of-way that they have to deal with in front of their shopping center. He asked if the City looks at either the sidewalk or the right-of-way or both.

Barrett explained that the ordinance was written in 1965 and it cannot encompass every situation, and every property is unique and different; he thinks that they could never have envisioned Washtenaw Avenue with a 20 foot right-of-way and then the 22 foot pedestrian right-of-way, which has been assigned to this site.

Grant said his experience is that when someone has a building permit, they are all ready to go, and all the zoning stuff is settled, but here the Building Department issued a Building permit but then someone said, Oh Oh, we didn't do the zoning thing. He asked if that was the situation.

Barrett explained that the Building person who usually issues the Building Permits was on vacation and someone took his place; he said he can attest that the Building Permit was issued in error and was subsequently retracted.

Grant asked about the allowed size of the sign and the proposed setback, noting that his calculation came to the sign setback only needing to be at 24 feet, unless his calculation was incorrect, noting he is new to the ZBA.

Barrett said the application states the correct setback because the sign height is 15 feet tall.

Briere asked if the applicant were to build a ground sign, how large could the sign be, and could the applicant built any ground sign without needing a variance.

Barrett explained that they could likely build an identification sign, in the style of a monument sign, probably only 4 or 5 foot tall. He said they could not build a larger multi-tenant sign.

Daniel asked how far they are from the sidewalk.

Barrett said they is 20 feet of right-of-way and then an additional 22 feet of pedestrian right-of-way to Washtenaw Avenue, so a total of 42 feet of

right-of-way to get to the property line, then an additional 30-foot setback for the requirement; the sign would be need to be located a total of 72 feet from Washtenaw Avenue.

Kirk asked if there has been any discussion for the City to sell the right-of-way to the property owner or does the City want to hold onto it for future use.

Barrett said he was not sure, but he was quite sure the City did not want to get rid of the right-of-way.

Dobmeier asked if there are any limitations to locating the sign within the parking lot, possibly in a parking island.

Barrett said the petitioner would have to cut into the parking lot to make a sign island, and the visibility would not be advantageous for the shopping center, tenants or shoppers to be set back at 72 feet, likely making the sign irrelevant at that location.

Dobmeier asked if putting the sign in the parking lot would create any limitations for cars .

Barrett responded, as long as it did not interfere with vehicle flow or traffic the petitioner could seek a location within the interior of the site.

PRESENTATION BY PETITIONER:

Pete Brown, Director of Operations for Washtenaw Commons, 3300 Washtenaw Avenue, Ann Arbor, applicant was present to explain the proposed project and ZBA request. He stated that they had applied for and received a permit from the City to build the sign, so they built and fabricated the sign which cost them \$35,000, so he and his tenants are counting on the City allowing them to install the sign because it offers them the best visibility from the road.

PUBLIC HEARING:

Noting no further public speakers, the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

The Chair noted the Board had received the following communications:

*Nathan Vought, Re-Imagine Washtenaw, Washtenaw County
Email from Takumi Jinmon, 2309 Yost Boulevard; Generally supportive
with concern for neighboring residents.*

Email from Laura Zeitlin, 2340 Parkwood Avenue; Opposed

MOTION:

**Moved by Westphal, Seconded by Peters, in Petition ZBA17-002;
3500 Washtenaw Avenue, Based on the following findings of fact
and in accordance with the established standards for approval, the
Zoning Board of Appeals hereby GRANTS two variances from
Chapter 61, Section 5:502 (2)(b) (Ground signs) to allow a fifteen (15)
foot tall sign to be installed six (6) feet, six (6) inches from the
Washtenaw Avenue property line and twenty-eight (28) feet, three (3)
inches from the Yost Boulevard property line.**

**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.**

**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 rights of others whose
property would be affected by the allowance of the variance.**

BOARD DISCUSSION:

*The Commission took into consideration the presented petition and
discussed the matter. [For a complete record of the discussion, please
see linked video format]*

**On a roll call, the vote was as follows, with the Chair declaring the
motion defeated. Vote: 0-8**

Variances DENIED

Yeas: 0

Nays: 8 - Chair Briere, DeVarti, Councilmember Westphal, Vice
Chair Dobmeier, Daniel, Eisenmann, Peters, and Grant

Absent: 1 - Lewis

F UNFINISHED BUSINESS

G NEW BUSINESS

H REPORTS AND COMMUNICATIONS

17-0281 Various Correspondences to the ZBA

Received and Filed

I PUBLIC COMMENTARY - (3 Minutes per Speaker)

(Please state your name and address for the record and sign in.)

J ADJOURNMENT

Moved by Westphal, seconded by Peters to adjourn the meeting at 7:06 p.m. On a voice vote, the Chair declared the meeting unanimously adjourned.

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.

Candice Briere
Chairperson of the Zoning Board of Appeals